

**WATER PROVIDER LEGISLATIVE TASK FORCE
AS ESTABLISHED BY ACT 1056 OF 2017**

**SUMMARY REPORT:
VISION FOR THE FUTURE,
CHALLENGES,
RECOMMENDATIONS
2017-2018 TASK FORCE MEETINGS**



SENATOR ALAN CLARK, SENATE CO-CHAIR

REPRESENTATIVE TIM LEMONS, HOUSE CO-CHAIR

*WATER PROVIDER LEGISLATIVE TASK FORCE
JANUARY 1, 2019*

(Released 03/06/2019)

**Water Provider Legislative Task Force
2017-2018**

**SUMMARY REPORT
Findings, Vision, Recommendations**

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Task Force Letter of Transmittal

February 28, 2019

To: The Senate and House Committees on City, County, and Local Affairs
92nd General Assembly

From: The Water Provider Legislative Task Force

RE: Final Task Force Report

On the following pages you will find the challenges, recommendations, and final report provided by the Water Provider Legislative Task Force (Act 1056 of 2017).

The members of the Task Force would like to take this opportunity to express their appreciation for the chance to participate in this very important process started by the members of the 91st General Assembly. Please note that we say this process has been started. It is our sincere wish that all effort be made to work toward the much needed improvement of Arkansas's water and wastewater infrastructure, which became evident to the Task Force during its hearings.

You will see from this report that we have endeavored to be diligent in our duties as they were assigned, and tried to the best of our ability to always keep paramount the interests of the citizens of the State of Arkansas at the forefront of our task. We are also sincerely grateful for the time and assistance from staff and others with this report.

We continue to offer our support in any way that you would see fit. We hope that our findings and recommendations will help all concerned in the legislative decision-making process.

Respectfully submitted,

Alan Clark

Senator Alan Clark
Senate Task Force Co-Chair

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WATER PROVIDER LEGISLATIVE TASK FORCE MEMBERS

Arkansas Senate

Senator Alan Clark – Senate Task Force Co-Chair

also Chair of the Senate City, County, and Local Affairs Committee

Senator Ronald Caldwell

Majority Party of the General Assembly appointed by the President Pro Tempore and the Speaker

Senator Scott Flippo

Designee of the President Pro Tempore of the Senate

Arkansas House

Representative Tim Lemons – House Task Force Co-Chair

also Chair of the House City, County, and Local Affairs Committee

Representative Fredrick J. Love

Minority Party of the General Assembly appointed by the President Pro Tempore and the Speaker

Representative Justin Boyd

Designee of the Speaker of the House

Non-Legislative Members

Judge Rick Davis, Garland County Judge

Designee of Association of Arkansas Counties

Appointed by the President Pro Tempore of the Senate

Mr. Mark Bennett, Chief of Water Development

Designee of Arkansas Natural Resources Commission

Ms. Jean Noble, Director, Grants Management Division

Designee of the Arkansas Economic Development Commission

Mr. Tom Fox, FTN Associates

Designee of the Arkansas State Chamber of Commerce

Mr. Jack Critcher, Legislative Liaison, Arkansas Municipal League

Appointed by the Speaker of the House of Representatives

Mr. Barry Weathers, Arkansas Home Builder

Appointed by the Governor

Mr. Dennis Sternberg, ARWA CEO

Designee of Arkansas Rural Water Association

Ms. Jennifer Enos, Springdale Wastewater Facilities Director

Designated by the President of the Arkansas Water Environment Association

Mr. Daniel K. Dawson, General Manager, Searcy Water Utilities

Designated by the President of the Arkansas Water and Wastewater Managers Association

Mr. Alan Fortenberry, P.E., CEO Beaver Water District

Designated by the Chair of the Arkansas Water Works and Water Environment Association

Mr. Dale Kimbrow, Manager of Planning, Regionalism & Future Water Source, CAW

Designated by the CEO of Central Arkansas Water

Mr. Barry Haas, Consumer Advocate

Appointed by the Governor

Liaison Members

Dr. Bob Blanz

Arkansas Department of Environmental Quality (ADEQ)

Mr. Michael Grappe

Arkansas Department of Environmental Quality (ADEQ)

Mr. Jeffery Stone

Arkansas Department of Health (ADH)

TASK FORCE ROLE

While every facet of our nation's infrastructure system is in need of investment, including roads, bridges, ports, and railways; America's water and wastewater infrastructure, in particular, desperately needs attention. The costs of inaction are great. Just a single day of water service disruption in the U.S. would result in a loss of \$43.5 billion in sales and a \$22.5 billion loss in the national gross domestic product. One-fifth of the U.S. economy would essentially come to a standstill if it did not have access to reliable and clean water. (.E. Mortimer & M. Leongini, *Why Water Infrastructure Investments Would Make a Big Splash*, U.S. Chamber of Commerce, 2015). The American Society of Civil Engineers (ASCE) estimates that our country's water infrastructure needs an additional \$1 trillion to maintain and expand service to meet demands over the next 25 years.

(<https://www.infrastructurereportcard.org/cat-item/drinking-water/>)

When evaluating Arkansas's public water supply on the basis of capacity, condition, funding, future needs, operation and maintenance, public safety, resilience, and innovation, the 2017 report by the American Society of Civil Engineers (ASCE) rates Arkansas at a D+. Arkansas's public water supply accounts for approximately 404 million gallons per day to serve 2.9 million people. Both the ASCE (2017) and Office of Water, EPA (March 2018) estimate \$7.4 billion in drinking water infrastructure needs over the next 20 years. A comparison of the 1995 \$3.7 billion in needs with the most recent estimate of \$7.4 billion assessment of needs, suggests that the state is losing the battle and in a hole twice as deep as it was 20-plus years ago. Arkansas's water transmission and distribution system, which consists mostly of buried pipes, represents 72% of the capital needs of the state's drinking water facilities. Of the 2,615 miles of water transmission and distribution lines, which will require replacement or rehabilitation within the next 20 years, 14% of these projects are at a critical stage, especially in areas of rural Arkansas and many need attention now.

(<https://www.infrastructurereportcard.org/cat-item/drinking-water/>)

The health and welfare of our people and our state's economy are at risk. Testimony heard by the Water Provider Legislative Task Force confirmed concerns regarding the state's aging water and wastewater infrastructure, plus additional challenges faced providing potable water and wastewater service. These will be detailed later in the report.

Motivated by legislative questions regarding the current status of water provision in Arkansas, the degree of consumer protection for the citizens of Arkansas, the financial and operational strength of many of the state's water providers, plus potential barriers to economic development in water-related issues, the Water Provider Legislative Task Force was established by Act 1056 of 2017 "*AN ACT TO CREATE THE WATER PROVIDER LEGISLATIVE TASK FORCE; AND FOR OTHER PURPOSES*" passed during the General Session of the 91st Arkansas General Assembly. The stated goals of Act 1056 are "To provide a better water provider system, to aid in obtaining basic water service for as many Arkansans as possible, and enhance economic development statewide." Act 1056 outlines certain beliefs in relation to the provision of water, in that no utility provides a more basic need by human life and for economic development than a water provider. (Appendix A)

Act 1056 directs the Task Force to study and provide a blueprint for Arkansas's water security and development to 1) enhance the water provider system within the state, 2) outline Best Management Practices to provide access to water in as broad a way and as economically feasible as possible, and 3) provide for water needs and practices to bring economic development to the state in a dependable and structured way.

The Task Force is tasked with providing a Vision Report outlining where Arkansas should be in the future; plus an Action Report to include recommendations and Best Practices, new services, and other areas the Task Force chooses to report on by January 1, 2019. Working toward the completion of the statutorily mandated tasks, the Task Force met frequently throughout 2017 and 2018 at the state Capitol, including an August 2018 meeting at the Beaver Water District in northwest Arkansas.

Information related to current water and wastewater infrastructure, asset management status of water provision, problems faced by water providers and consumers, and barriers to economic development within the state, was obtained through data collection and presentations and testimony given by state agencies, water providers, elected officials, and consumers (Appendix C). What follows are major challenges identified by the Task Force regarding the provision of water, includes recommendations and Best Management Practices for addressing current problems and barriers that threaten access to water; also the financial and operational solvency of many of the state's water providers, the efficient and economically feasible delivery of clean water to the citizens of Arkansas, consumer rights in relation to water, and further economic development in underserved areas of the state.

SUMMARY REPORT

Vision of Water Security and Development in Arkansas

Given the complexity of water provision, an abbreviated Vision Statement would not clearly capture the testimony, presentations, statistics, and discussion entered into by the Task Force. General consensus is that the state's water providers should comprehensively serve their areas; ideally:

Clean, safe, affordable, and abundant drinking water should be available to all the citizens of Arkansas, without discrimination; and where economically feasible, provided by financially and operationally-sound public, private, or community water providers whose policies regarding the access and distribution of water are implemented in a manner that is absent of political agendas and demonstrates a commitment to the protection of consumer, industrial, economic, and agricultural rights, as well as the protection of Arkansas's vital water resources.

Certain identified essential realities and circumstances potentially impact the Vision Statement and must be considered when striving for such an ideal vision:

- Arkansas's natural resources, especially water, must be protected when promoting residential, agricultural, industrial, and economic development, while maintaining and preserving natural habitats.
- Not all Arkansas residents live and work in areas where it is achievable in terms of either cost or engineering capabilities to supply water from a public, private, or community water system due to differences in treatment, distribution, population density, availability of resources, etc. There are isolated areas of the state where it is not economically feasible to provide a "public water system" to local residents.
- Water capacity issues commonly supported by hard data and verified by appropriate state agency(s) do at times delay or prohibit access to a public, private, or community water system.
- Water providers, especially small systems, frequently lack both economies of scale and financial, managerial, and technical capacity, which can lead to problems of meeting Safe Drinking Water Act standards. ASCE (2017).
- Some Arkansas citizens do not have the financial resources to pay the rates necessary to cover the full costs of water acquisition, production, distribution, and depreciation.

- Local policies based on established boundaries have hindered decisions on water supply, availability of water, operations, and access versus the needs and rights of consumers, and for economic development.
- Decisions should be based on sound research and consumer needs, and where those needs stimulate economic development.

(Note: It is recognized that many Arkansas citizens obtain water from privately-owned sources outside the assigned scope of Act 1056 of 2017, and were not addressed by the Task Force.)

Major Challenges Impacting Water Security and Development in Arkansas Identified by the Task Force

The efficacy of current water- related legislation should be carefully evaluated with new legislation drafted and supported where needed to address the challenges and recommendations that follow

1. CHALLENGE:

Currently, state jurisdiction and oversight of water utilities is spread across primarily three state governmental agencies: Arkansas Natural Resources Commission, Arkansas Department of Health, and the Arkansas Department of Environmental Quality. Under the current structure, no single state agency has complete authority/ leverage/means to fully monitor and initiate needed changes toward the goals of access to water at justifiable rates, water provider sustainability, and protection of consumer rights.

While maintaining current monitoring and regulatory responsibilities of the Arkansas Department of Health (ADH) and the Arkansas Department of Environmental Quality (ADEQ), there is a need to work with other applicable state and federal agencies to develop operating procedures, estimated costs, and corresponding legislation expanding the regulatory, monitoring, and leverage responsibilities of the Arkansas Natural Resources Commission (ANRC) or other state agency(s) or the state's planning districts toward the goals of both consumer protection and public water provider sustainability. The state has the responsibility to be concerned about water. If systems are in trouble, the appropriate state agency or agencies must have the authority and leverage to ensure that utilities institute policies and practices that safeguard: the financial and operational solvency of water providers and the efficient and economically feasible delivery of clean water to the citizens of Arkansas, while respecting consumer rights in relation to water and promoting further economic development in the state. Sufficient oversight may or may not already exist within state agencies. Arkansas's State Water Plan recommends "receivership proceedings should be initiated for public water/wastewater providers who have defaulted on loans". The Task Force heard testimony from various utilities/cities across the state that can't even make payroll or make critical repairs; much less address major depreciation, upgrades, or replacement projects. Again, we ask: who or what state agency has the authority/expertise to make needed decisions to force water providers or their governing bodies to make the needed changes?

Upon the identification of a water or wastewater provider in fiscal distress, the appropriate state agency must have the regulatory authority to give aid and to evaluate rates based on current and future needs, to assist in some form of regionalization or at least consolidation of function(s) and to assist the utility to develop a sound plan to address fiscal, operational, repair and replacement concerns and that ensure water continues to flow.

At the water district or system level, testimony brought to light a perceived lack of diverse representation within district or system utility governance and policy making. Some of the worst challenges and problems seen by the Task Force seem due, in part, to a lack of representation in the policy making process of a utility.

RECOMMENDATIONS:

1.A A state agency shall be designated to identify water and wastewater systems in fiscal distress, address areas of fiscal concern, and take steps to either bring the system back to fiscal stability or consolidate the system with another willing system. A state agency shall be designated to identify, publish, and maintain a list of water and wastewater systems in fiscal distress.

1.B A system will be deemed to be in fiscal distress if it fails to obtain a rate study, fails to comply with a rate study, or has been found by the Arkansas Department of Environmental Quality (ADEQ) or Arkansas Department of Health (ADH) to be in significant non-compliance with ADEQ or ADH regulations due to an inability to adequately provide funds needed for operation, maintenance, and compliance measures. Upon the identification of a water provider in fiscal distress, the appropriate state agency must have the regulatory authority to give aid and to evaluate rates based on current and future needs, assist in some form of regionalization or at least consolidation of function(s), and assist the utility to develop a sound plan to address fiscal, operational, refurbishment, and replacement concerns and ensure that water continues to flow.

1.C To ensure fiscal adequacy, each water or wastewater system shall obtain a valid rate study no less than once every five (5) years. Rates derived from this study shall be implemented as recommended.

1.C.a The designated state agency will define the parameters of the rate study with one of the components to include a review of the system's refurbishment and replacement account

and asset management plan, which evaluates the remaining useful life and eventual replacement of infrastructure. The rate study shall use as its basis the guidelines set forth by the American Water Works Association (AWWA) and/or the Water Environment Federation (WEF).

1.C.b A system will be advised to deposit a minimum of five percent (5%) per annum of its gross revenues or a higher amount of funds within its dedicated replacement and refurbishment (depreciation) account until a more accurate amount (percentage) is determined by the rate study, asset management plan, or an engineering study of the system. The intent is to ensure that rates are adequate to not only fund operation and maintenance but to also keep the system in good repair and maintain a sufficient reserve /depreciation fund to ensure ongoing fiscal sustainability into the future.

1.C.c Rate studies should be conducted by engineers, accountants, or other qualified persons approved by the designated state agency.

1.C.d All systems will be required to complete and submit a rate study to the designated state agency within five (5) years according to the following schedule: systems serving less than 500 customers by July 1, 2022; systems serving 501 to 1,000 customers by July 1, 2023; and systems serving greater than 1,000 customers by July 1, 2024. All rate studies will then be required on a five (5) year cycle.

1.C.e Looking toward the merits of regionalization and consolidation, and to ensure the sustainability of water and wastewater systems, the creation of new systems with less than 300 customers will only be considered and approved by state agencies if ADH or ADEQ determines public health or the environment is threatened without its creation or there is no other viable available alternative. All water and wastewater systems seeking new consideration and approval shall be organized through a governmental entity such as, but not limited to, an improvement district, or a county or a municipality and must prove the system's ability to remain fiscally sustainable with future costs addressed. It is recommended that if a new wastewater system is necessary, its maintenance and future costs be tied to the property it serves as administered by a governmental entity such as an improvement district, etc.

1.C.f Any new water or wastewater system must complete a technical, financial, and managerial capacity review conducted by ADH, ADEQ or ANRC.

1.C.g Any system planning an expansion shall obtain a rate study or amend a current study to include consideration of the financial impact of the expansion prior to construction of the expansion.

1.D Once required to have a rate study, each retail water and wastewater system shall file its most recent rate study annually with Legislative Audit at the same time the system files its required audit or statement of agreed-upon procedures (due within one year following the system's fiscal year end) required by ACA. §14-234-119.

1.E The designated state agency shall review each system's rate study and determine whether the system is in fiscal distress:

1.E.a If a water or wastewater system fails to maintain minimum rates recommended by the rate study, the designated state agency shall consider the system to be in fiscal distress.

1.E.b If a water or wastewater system fails to conduct a rate study, the designated state agency shall consider the system to be in fiscal distress.

1.F At least once a year, the Director of the designated state agency will provide notice to any system identified as being in fiscal distress of its fiscal distress designation. The system will have the opportunity to appeal the Director's decision to the adjudicatory body of the designated agency, and later to circuit court pursuant to the designated agency's rules and the Arkansas Administrative Procedure Act rules.

1.G A fiscally distressed system shall file a system-wide improvement plan with the designated state agency, which includes specific actions to be taken by the system to correct financial, technical, and managerial deficiencies within the system.

1.G.a The designated state agency shall execute a determination approving, approving in part, modifying, or denying the plan.

1.G.b The same appeals process described for appealing the decision identifying a system as in fiscal distress also applies to appealing the decision regarding the improvement plan.

1.G.c If the designated state agency determines the system's improvement plan has been implemented, the agency shall issue a determination removing the fiscal distress designation.

1.H No state agency shall provide financial assistance of any type to a water or wastewater system in fiscal distress until an approved system improvement plan is in place, unless expenditures are for consolidation efforts or for immediate urgent needs to ensure preservation of the public peace, health, and safety, such as needs associated with a declared emergency or disaster.

1.I Except in cases of a declared emergency or disaster, a system in fiscal distress must obtain written permission from the designated state agency before incurring additional debt, or accepting assistance for the refurbishment or replacement of facilities or construction of facilities not within the system’s improvement plan, or transferring assets to another entity.

1.J The designated state agency may take additional actions to bring a system back to fiscal stability including the following:

- 1.J.a** Require the system to adopt and maintain a user rate structure necessary to fund operation, maintenance, and replacement of the system; principal and interest obligations; and adequate depreciation to recover the cost of the system over its useful life;
- 1.J.b** Require the system to employ licensed or other personnel for the financial, technical, and managerial operation of the system;
- 1.J.c** Appoint a receiver; or
- 1.J.d** Take steps to reorganize, restructure, or consolidate the system.

1.K In an effort to minimize the impact of political agendas in utility policy, water commissions/boards are strongly recommended in municipalities that are large enough to support such commissions/boards and/or when twenty (20%) or more of utility customers outside the municipal limits are served. In the event that 20% or more of the retail customer base is outside the system’s municipal limits, a water commission or board should be created for the purpose of governance and oversight of the utility system with duties as outlined by federal and state guidelines. (Wholesale water is excluded from the recommended 20% requirement.) Note: It is not the intent of the Task Force to negatively impact any utility systems that were formed under specific legislation and/or already have commissions/boards who are demonstrating satisfactory accountability and fiscal stability. District or system water commissions or boards shall have diverse voting representation from business, industry, consumers, and other appropriate areas to promote accountable, knowledgeable oversight within each district or system and to ensure water provider sustainability and respect for consumer rights.

In the event water system oversight and governance is by a local government entity such as a city Board of Directors or City Council, water commissions/boards are strongly recommended in municipalities large enough to support adequate representation on a commission/board and/or again

when 20% of more of utility customers reside outside the municipal limits. While such an established commission or board shall be independent from the local government entity body; when needed or desired, the respective governmentally elected officials may sit on the new independent water commission/board along with any additional appointed or elected commission/board members. A minimum of 51% of the commission/board membership should represent the retail customer base inside the respective government entity limits. The suggestion for legislative consideration is that one (1) commission/board member is added for every 20% of retail customers outside the municipal corporate limits. In order to maintain the recommended majority of commission/board members residing within the municipal limits, a cap of two (2) members (40% of retail customer base outside the corporate limits) is suggested. The Task Force recognizes that in some cases in small municipalities, it may be difficult to identify qualified willing commission/board members; however, it is also noted through Task Force testimony that many of the most severe problems are occurring in water systems within these same small municipalities. Current legislation should be reviewed and changed if needed to accommodate adequate representation of consumers on recommended water commissions/boards.

1.L The State Water Plan makes note that “training programs should be developed for utility boards” on how to “operate their facilities and manage infrastructure.” The recommendation is to encourage more educational outreach by the ANRC, ADH, ADEQ, along with such agencies as Arkansas Rural Water Association (ARWA) to utilities and governing bodies instructive to proper utility asset and fiscal management and operations. (Publication – *“Effective Utility Management”*). It is a recommendation that such training may also need to somehow be tied to financial assistance requests. It is strongly recommended that anyone overseeing utilities receive reasonable, duty-specific content education. Without appropriate education, all who serve and consequently the respective utility system are set up for potential failure. The appropriate resources must be available to the training agencies so that the training can be taken to the respective governing and management bodies or can be delivered effectively through technology so as to facilitate access to the critical content.

1.L.a It is recommended that within one (1) year of the election or appointment all elected and appointed members of a water or wastewater governing body such as a commission, board of directors, or city council receive training on the key regulatory and management responsibilities of the position.

See Appendix E for suggested specific training content.

1.L.b Within one (1) year of election or appointment, a majority of the members of an elected or appointed water or wastewater governing body such as a commission, board of director, or city council shall be mandated to receive a minimum of eight hours of training on the key regulatory and management responsibilities. (Appendix E).

1.L.c Failure to receive training in 1.L.i and 1.L.ii as required shall place the water or wastewater system in fiscal distress. This designation is due to the importance of the required training to successfully manage a system.

1.L.d It is recommended that the Association of Arkansas Counties and the Arkansas Municipal League incorporate water and wastewater training into the training provided to County Judges, a designated number of Quorum Court members, and other designated elected officials at the city and county levels. While these elected officials may not directly oversee water and/or wastewater operations, they address water and wastewater issues in their service to their constituents.

1.L.e It is also recommended that an Advisory Board be formed as per Appendix E to oversee the development and tracking of a training curriculum.

1.L.f The training curriculum should be systematically and regularly evaluated to ensure that content is revised and updated, if needed, to reflect best practices of the water/wastewater industry's body of knowledge.

2. CHALLENGE:

Primarily due to lack of due diligence, along with fear of political consequences, municipalities, commissions, and local boards are unwilling to institute rate structures that will provide the necessary revenues to properly operate and maintain a public utility. The state's water and wastewater infrastructures are aging and many water providers report no, or very limited financial ability to reinvest in their systems to maintain, upgrade, and replace deteriorating critical infrastructure. Such practices result in utilities relying on loans and grants to provide operating, Capital Improvement Plan (CIP) funds, and other revenue to cover depreciation costs. In a climate of tightening state and federal budgets, loans and grants utilities depend on are decreasing in availability, often placing utilities in financially unsustainable positions.

Some cities use water revenue to subsidize their general funds and to supplement the budgets of other city departments and services, and to increase revenues. Such practices have the potential to limit the ability of the water system to reinvest in its water system for maintenance, upgrading,

and replacement of aging critical infrastructure, as previously described. This puts utility managers in an untenable position.

RECOMMENDATIONS:

2.A Rates should be set to adequately cover all costs for operation and maintenance, debt service, required reserves, depreciation, future capital expenses and an annual audit or agreed upon procedure.

2.B To ensure fiscal adequacy, a valid rate study should be performed by each water and wastewater system no less than once every five years. Rates derived from this study should be implemented as recommended. The rate study and its implementation should be reviewed by the Arkansas Natural Resources Commission (ANRC). If a water or wastewater system fails to conduct a rate study or implement it, that system shall be considered to be in fiscal distress.

2.C ANRC or other state agency should have the leverage and the means to require public utilities to determine full-costs via standard approved rate studies, and institute full-cost pricing of services, particularly water rates that cover the costs of not only providing the service, but also determine a percentage of funds to be set aside to provide for depreciation and upgrades to the system, which will promote present and future sustainability. Water providers shall deposit no less than five percent (5%) per annum of gross revenue in a restricted reserve fund to provide for major replacement or repair projects that are prioritized by rate studies, master plans, or asset management plans that identify 5-10 year long-term needs. This reserve fund shall not be used for annual operations and ongoing maintenance of the system.

2.D ANRC should continue to monitor the condition of the state's water and wastewater systems, provide cost assessments to educate the public regarding infrastructure needs, identify necessary critical improvements and estimated costs of such needs, and have available this information if federal, state, or other funding should become available.

While dollar needs for water and wastewater infrastructure are difficult to obtain and calculate, EPA does a periodic survey of water and wastewater needs. In the 2015 Drinking Water Needs Survey and Assessment (<https://tinyurl.com/y7eyh695> report/citation) Arkansas's twenty-year drinking water infrastructure needs were estimated to be \$7.4 billion in 2015 dollars. Of that amount \$5.5 billion

were in transmission and distribution needs, \$900 million in treatment system needs, \$640 million in water storage needs, \$217 million in water source improvements, and \$156 million in other needs. In 2015 dollars, the total water infrastructure need in 2011 was \$6.8 billion. The water infrastructure needs increased by \$600 million between 2011 and 2015.

In the 2012 Clean Watersheds Needs Survey (https://www.epa.gov/sites/production/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf report/citation) EPA estimated Arkansas's twenty-year wastewater needs to be \$710 million in 2012 dollars. Of this amount, \$169 million were in advanced wastewater treatment needs, \$124 million in secondary wastewater treatment needs, \$117 million in infiltration-inflow correction, \$107 million in new interceptor sewers construction needs, \$102 million in rehabilitation or replacement of sewers, \$91 million in new sewer collector needs. In 2012 dollars, the total wastewater infrastructure need in 2008 was \$534 million. The wastewater needs increased by \$176 million between 2008 and 2012. The rigorous requirements of the 2012 Clean Water Watersheds Needs Survey make it likely that the numbers reported understate wastewater infrastructure needs. ANRC did survey wastewater systems needs for the 2014 Arkansas Water Plan Update. Based upon the results of the survey, the Water Plan estimated wastewater infrastructure needs by 2050 would be \$3.85 billion in 2014 dollars.

(Arkansas Water Plan 2014 Update Appendix F Section 7 page 7.1

https://static.ark.org/eeuploads/anrc/App%20F_2014%2011%2011%20AWP%20FINAL%20Draft%20Gap%20Analysis.pdf)

2.E Water and wastewater utilities are to be identified as an enterprise fund department with all generated revenue mandated to stay within utility budgets to ensure adequate funding for operation and maintenance, management, debt service, depreciation, upgrades, etc. rather than being diverted to the general funds of government entities. Although strongly discouraged, franchise fees and excess funds beyond expenses related to operation and maintenance, management, and reserves supporting debt service, depreciation, upgrades, etc. may be utilized outside the utility under strict monitored and audited guidelines.

2.F As recommended in Section 1.E, those who oversee the management of water or wastewater systems shall participate in mandatory ongoing education.

2.G Investigate feasibility of assistance programs for the most impoverished customer base. Since the Arkansas Constitution, Article 12 prohibits assistance programs being provided by water providers, then the Task Force would hope that water providers would investigate the possibility of different rate structures for the most impoverished of their customer base and work with others within the community to identify referrals to agencies that might be able to provide some assistance programs.

3. CHALLENGE:

Many areas of the state are experiencing a loss of population, which has decreased the revenue base to levels that in some cases cannot support day-to-day operations, much less the long-term sustainability of their water and wastewater systems. While this is a true statement, primary responsibility to maintain a properly functioning utility falls back on the ratepayers. This statement is identified in the Arkansas Water Plan (AWP) (section 2.5). A consumer's ability to pay is somewhat subjective based on their priorities – drinking water is the most economic utility bill individuals have and yet it has a low priority.

RECOMMENDATIONS:

3.A The Task Force respects local control. However, it is more important for people to have clean, safe water. The Task Force strongly encourages regionalization, or some form of consolidation of utilities, management, and resources to provide greater efficiencies in operation and greater financial stability. It is recommended that ADH, ADEQ and/or ANRC be granted authority to require some form of consolidation when the need arises, especially in situations where there is habitual water provider noncompliance. Again, while local control is to be respected as much as possible, if a water provider is failing or requires some form of aid, then there shall be assistance from the respective state agency in the development of an improvement plan. This improvement plan should include consolidation in some form. Consolidation can take various forms depending on the needs of the water providers. One example is several systems being operated by a few key personnel rather than each system duplicating the same key positions.

3.B Review and amend statutory requirements that discourage regionalization and consolidation. Strongly recommend that economic incentives be put into place for strong successful water providers/systems to be able to consolidate with troubled, failing systems. Economic development within the state depends on the dependable, plentiful provision of water.

3.C The Task Force recognizes that the potential is that in some cases such as a system(s) consolidating with a failing system(s) and in situations where systems extend lines to serve more sparsely settled areas; customer costs may increase.

3.D The Task Force recognizes rate structures for extensions in certain areas may need to be different.

3.E Identify programs, grants, or low-interest loans for needed system extensions, replacements and other qualified major projects. The Task Force recognizes the value of certain long term loans. The problem lies in ineffective and uneducated management of those loans considering only the loan repayment but not taking action to institute additional restricted funds for depreciation. In some areas the declining customer base and decreasing revenue are problematic.

3.F When feasible, additional allocation of water supply or wastewater loading should be given to a system willing to accept a failing system.

4. CHALLENGE:

With operators aging and retiring across the state, there is a growing shortage of adequately trained and skilled water and wastewater supervisors with the necessary, detailed knowledge to efficiently operate water systems. The aging and retirement is also causing an increasing lack of technical support.

RECOMMENDATIONS:

4.A Encourage the water industry and associated organizations to educate local municipalities, commissions, boards and the general public as to the importance and expertise required to be an operator or manager, and equate that to suitable compensation which promotes recruitment and retention, and provides incentives for individuals to consider a career in the industry.

4.B Encourage continued efforts by water industries and organizations to actively promote the recruitment, education, and licensing of workers to fill the gap of retiring employees.

4.C Where feasible, encourage achievable forms of regionalization, consolidation and sharing of personnel and resources to ensure the expert management and operations of local utilities.

4.D Encourage Arkansas's Community Colleges and Technical Institutes to develop more certification and Associates' Degree programs in Water Operations and Wastewater Operation.

5. CHALLENGE:

Municipalities have been one of the most important ways that Arkansans have organized to provide drinking water and deal with wastewater. In doing so, they understandably have often required that those outside the city annex into the city to receive those services.

Testimony brought to light issues such as annexation, the potential for increased collection of sales tax and ad valorem taxes, and other concerns have resulted in water access that in some circumstances is being denied within the ANRC-recognized service area that was accepted by the water provider, even in areas where property owners have paid for infrastructure already in place. Situations like this can be avoided through proper research by the individual prior to development. There is concern that residential and economic development in Arkansas is being hindered, and in some cases totally stopped by using water access as a political tool. The Task Force hopes these are isolated issues. In most cases, if not all, the availability of water is not the only factor in creating adversarial situations. Service area problems are occurring across the state. Resolving those problems through state government or bureaucracy at a higher level is not the preferred solution. Localized service problems cannot always be resolved with simple solutions. Most are resolved through negotiations between systems, but if such negotiations fail then the designated state agency should be empowered to arbitrate. However, some service problems presented to the Task Force were complicated by factors other than just water access. As stated in the Vision Statement earlier in this report, the Task Force consensus is while commercial customers may use more water than residential customers, when no capacity or engineering issues exist and commercial customers are limited or denied, the reason may very well be political.

There was concern by some on the Task Force that consumers have limited due process and minimal security in relation to water provision. It was also expressed that some consumers receive limited justification for rate structures and current legislation and state agencies' statutory

scope of authority provide for limited consumer protection in the court system. Others on the Task Force did not believe this to be the case. However, the overall consensus of the Task Force was that under reasonable circumstances and barring legitimate obstacles to service, water providers should service their ANRC-recognized service areas. It is readily recognized that the majority of local utilities in the state are responsive and accountable to their customers. Rate adjustments are generally accompanied by open meetings with opportunity for input from the public. For the most part, the local bodies responsible for establishing rates are very cognizant of the impact of adjustments and their policies.

RECOMMENDATIONS:

5.A Recommend legislation to give authority to ANRC or other state agency the ability to require water providers to honor written agreements regarding water provision within the current ANRC-recognized service area or release the area(s) in question to another water provider who is willing to service the area(s) at no additional costs to property owners who have already paid for the infrastructure. It is understood that property owners should pay the costs of any needed extensions to connect to the willing provider. Said written agreements could be between water providers or between water providers and consumers.

5.B Encourage municipal water providers who are willing to provide service to areas outside their corporate limits to do so through legally constituted written agreements executed by all parties and to clearly define any annexation or other requirements for any access or service prior to the initiation of any action to provide water to those areas. Failure to clearly define all requirements or any annexation for initial or future service on the initial written agreements should bar requirements being added at a later date without the mutual written agreement of all parties.

5.C Establish protocols and practices that eliminate or at least limit the ability to use water as a means to promote political agendas. That could include the establishment of a separate utility commission or board that operates more independently of municipal governance where practicable. A water or wastewater providers' primary purpose is to provide water and service to as many customers as possible, barring any capacity, engineering, or written contractual limitations. Where the water or wastewater provider is being prohibited from providing service to customers in its ANRC-recognized service area by the will of the local governing authority or by other means, or who

practice irresponsibly in relation to consumer rights and not following best management practices in providing water or wastewater service, ANRC or the designated state agency shall intervene.

5.D Unless a provider has made the decision not to extend service outside their political boundaries, no one should be denied access to service where suitable distribution and collection infrastructure already exists. This includes for reason of race, gender, religion, and political subdivision. Proper engineering practices should be followed and the costs should be borne by the customer.

5.E Since legal recourse may be beyond the means of many water and wastewater customers, it is recommended that a consumer appeals process be developed through ANRC, or other appropriate state agency who is accessible and fair to all concerned. ANRC, or other appropriate state agency, shall develop these policies and procedures to include mediation and guidelines for dismissing frivolous complaints and issues so as not to overburden ANRC or the designated state agency.

6. CHALLENGE:

A gap exists in the public and the local, state, and federal leaders' understanding as to what is required to efficiently operate and manage a water/wastewater utility, such as personnel qualifications, financial sustainability, regulatory compliance, environmental constraints, and political parameters.

RECOMMENDATIONS:

6.A More education of the public, lawmakers, and others is needed to communicate the importance and value of safe and clean water provision. Educating K-12 teachers and encouraging field trips would be an important component of this education.

6.B There are many examples of successful educational programs in the state. An important element that is lacking is the involvement of upper level business people who comprise boards, commissions, councils, and legislatures. Educational initiatives should include, but not be limited to public service announcements, health fairs, business and industry contacts, community groups, and other appropriate public venues.

7. CHALLENGE:

Ensuring Arkansas's water integrity for the present and into the future for drinking water, agricultural, industrial, commercial, economic development, recreational, and environmental water uses.

RECOMMENDATION:

7.A Implementation of the Arkansas Water Plan (AWP), should be continued and should be viewed with a high level of importance to ensure that the desired results are accomplished. Providing additional resources for the implementation of the AWP would help to address many of these issues.

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Key Regulatory and Management Responsibilities and Educational Training Strategies for Governing Bodies

The Arkansas Department of Health (ADH) currently has a contract with Communities Unlimited to provide Board member training for those city councils or governing boards who request it. Communities Unlimited provides this type of training both in Arkansas and other states as well.

Key Regulatory Responsibilities of a Board Member:

- Accountability and Liability
- Insurance
- Safe Drinking Water Act and Associated Regulations
- State Primacy Agency Roles and Regulations
- Operator Requirements and Oversight
- Clean Water Act and Safe Water Act Requirements

Key Management Responsibilities of a Board Member:

- Policies and Procedures
- Personnel Management
- Financial Management
- Emergency Preparedness
- Hold open meetings and Keep open records

Committee/Advisory Board for Development of Required Training:

- Arkansas Department of Health
- Arkansas Department of Environmental Quality
- Arkansas Natural Resources Commission
- U.S. Department of Agriculture/Rural Development
- Arkansas Rural Water Association
- Arkansas Municipal League
- Communities Unlimited
- Arkansas Water Works & Water Environment Association
- Arkansas Environmental Training Academy

Content Development:

- ADH and ADEQ-Developed Water/Wastewater Operator Training Guidelines
- State and Federal Financing Entities --ANRC and USDA/Rural Development
- Arkansas Municipal League
- Arkansas Rural Water Association
- Communities Unlimited
- Tap into Local Colleges to assist in curriculum development
- State Legislature—guidelines for legislator training

Possible Training Venues (*with emphasis on providing training at the local level*):

- Arkansas Rural Water Association Annual Conference and scheduled meetings in Lonoke or on-site with small Utility Boards/City Councils/Mayors
- Arkansas Water Works and Water Environment Association Annual Conference
- Arkansas Department of Health training
- Arkansas Department of Environmental Quality training
- Arkansas Municipal League Annual Winter/Summer Conferences
- Communities Unlimited – at the local systems or other designated locations around the state
- Arkansas Water and Wastewater Managers Association Annual Conference
- Association of Arkansas Counties Annual Conference

Monitoring:

- State/Local Governments' Orientation for Newly Elected Officials
- Arkansas Natural Resources Commission – based on Water and Wastewater Operator Tracking System
- Arkansas Department of Health – Currently Monitors Water Operators throughout Arkansas

Curriculum for Continuing Education Units (CEUs)

- Water/Wastewater systems and how they operate
- Rates/Business Principals
- Infrastructure Sustainability
- Importance of Water Operator Expertise
- Operator/Manager Compensation, Retainment, etc.
- Mississippi Board and Elected Officials Training Material (Build off that)
- Arkansas Freedom of Information Act
- Preparing Agendas and Conducting a Proper Meeting

*****Recommendations are based on current availability. Future recommendations and guidelines will need to be taken into consideration***

Reports and Materials Consulted

1. ***“Arkansas Water Plan-Update”*** (2014), Arkansas Water Plan, Arkansas Natural Resource Commission (ANRC) www.arwaterplan.arkansas.gov
2. ***“Arkansas Water Plan Compliance”*** (Title IV). Arkansas Natural Resource Commission www.anrc.arkansas.gov/divisions/water-resources-management/water-plan-compliance
3. ***“National Water Program Guidance”*** (2018-2019 Draft) Publication Number: 800D17001. Environmental Protection Agency (EPA) www.epa.gov/nscep
4. ***“History of the Regional Water and Sewer System Serving Hot Springs and its Environs in Garland County, Arkansas”*** Compiled by Ray Owen, Jr. P.E., Attorney; Don Beavers, P.E. (retired); Donald R. Brady, P.E. (retired); Milton Raabe, P.E., (retired); Bill Reinhardt, Operations Director (retired) www.ngcwater.com
5. ***“Why Water Infrastructure Would Make a Big Splash”*** (2018) Mortimer & Leongini. U.S. Chamber of Commerce Series www.uschamber.com/series/above-the-fold/why-water-infrastructure-investments-would-make-big-splash
6. ***“Drinking Water Survey and Needs Assessment”*** (March 2018) 6th Report to Congress. Office of Water (4606M), EPA 816-K-17-002 www.epa.gov/drinkingwatersrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment
7. ***“Water and Waste Disposal Loan & Grant Program in Arkansas”*** Stephen Lagasse, Community Programs Director, United States Department of Agriculture-Rural Development www.rd.usda.gov/programs-services/water-waste-disposal-loan-grant-programs/ar
8. ***“The Future of Water Affordability Programs”*** (10/1/18). Cromwell, Kostiuk, Locklear www.waterworld.com/articles/print/volume-34/issue-10/features/affordability-programs.html

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2017-2018 TASK FORCE MEETING TOPICS

Total of 22 meetings

All agendas, minutes, and exhibits for each meeting of the Task Force can be found at the Arkansas General Assembly's website:

1. Go to the legislative website's home page at www.arkleg.state.ar.us
2. At the top left click on "List All Committees". It will open to the "Joint" tab
3. Click on the "Task Force" tab
4. Scroll down to "Water Provider Legislative Task Force" and click on that link
5. At the top right under "Committee Links" click on "Past Meetings". That will load the links for every meeting of the Task Force from 08/30/2017 through 01/08/2019
6. Click on each date to see the agenda, exhibits, etc. for that meeting

Meeting Dates & Topics

August 30, 2017

- A. Election of the Permanent Co-Chairs of the Task Force: Senator Alan Clark; Representative Tim Lemons.
- B. Overview of Act 1056 of 2017
- C. Adoption of Rules of Procedure
- D. Update on the "*Arkansas Water Plan*"
 - Crystal Phelps, General Counsel, Arkansas Natural Resources Commission and
 - Mark Bennett, Chief of Water Development, Arkansas Natural Resources Commission

September 21, 2017

- A. Discussion of Regulation and Jurisdictional Limitations and Consumer Protections:
 - Charles "Chuck" Harder, Deputy Attorney General, and Cory Cox, Legislative Director, Office of Arkansas Attorney General,
 - John Bethel, Executive Director, Arkansas Public Service Commission,
 - Ryan Benefield, Deputy Director, Arkansas Natural Resources Commission
- B. Discussion of Local Municipal Water Issues between Sherwood and Jacksonville:
 - Greg Heslep, Developer, Mayor Virginia Young, City of Sherwood, Stephen Cobb, City Attorney, City of Sherwood and Roger Fitzgibbon, Attorney, Gill Law Firm.

October 11, 2017

- A. Discussion of Water Issues in Northwest Arkansas --Senator Bart Hester, Senate District 1
- B. Roundtable Discussion of Drafting a Vision of Where Arkansas Should Be in the Future as Related to the Provision of and Access to Clean, Affordable Water for all Consumers; Residential, Business and Industry, Agricultural and Other.

November 8, 2017

- A. Discussion of Issues Due to Declining Populations Facing Rural Communities Trying to Maintain Water and Wastewater Systems and Infrastructure
 - City of Brinkley, Rob Parkman, Water Superintendent, Carl Frien, Water Commissioner, and Brad Wingfield, Engineer, PMI Engineers

- City of Turrell—Mayor Dorothy Cooper
- City of Earle—Mayor Sherman Smith
- City of Altheimer—Mayor Zola Hudson and Malcolm Scott, Water Superintendent
- City of Wabbaseka—Mayor Myra Edwards
- City of Humphrey—Mayor Cleveland Hatch and William Tibbett, Water Superintendent

January 3, 2018

- A. Discussion of Cities and Towns Experiencing Rapid Growth, Resulting in Difficulties with Operational Problems Such As Infrastructure Expansion and Replacement, Water Shortages, Jurisdictional Complications, Funding, Licensing, and Other Issues –
 - Larry Oelrich, Director of Public Works, City of Prairie Grove, Washington County
 - Frank Holzkamper, Water Superintendent and Wastewater Utility Superintendent, City of Centerton, Benton County
 - Tim Nyander, Utilities Director, City of Fayetteville, Washington County
 - Mayor Terry Robinson, City of Wooster, Faulkner County
 - Greg Dell, COO, Conway Corp, Faulkner County
 - Jerry Kopke, Rural Communities Assistance Program, Communities Unlimited, Fayetteville
 - Dennis Sternberg, CEO, Arkansas Rural Water Association
- B. Overview of Water Resources Development and Grants Program at the Arkansas Natural Resources Commission (ANRC)
 - Mark Bennett, Manager, Water Development Division, ANRC- (**postponed due to time constraints**)

February 7, 2018

- A. Discussion of the Arkansas Department of Emergency Management’s Contingency Plans and Response to Critical Infrastructure Failures of Utility Systems
 - A. J. Gary, Executive Director, Arkansas Department of Emergency Management (ADEM)
- B. Discussion of Former Water Issues in Saline County and Solutions Found
 - Perry Y. Young, Attorney, Jensen, Young, & Houston, PLLC
- C. First Vision statement draft distributed

April 11, 2018 (all-day meeting)

- A. Review of the “*History and Background of Water and Sewer Issues in Garland County and the City of Hot Springs*”
 - Ray Owen, Jr. Attorney, Owen, Farnell, & Garner and Don Beavers, P.E. (retired),
 - Bill Malone, Engineer, North Garland County Regional Water District.
 - Bob Mathis, former State Representative and former Mayor, City of Hot Springs
- B. Discussion of Ongoing Problems with Obtaining Water and Sewer Service in Garland County and the City of Hot Springs
 - Joe Gibson, owner of GTS Heating and Air
 - Perry Young, attorney at law
 - Chris Thornton, J.C. Thornton Company
 - David Hull, Sonic Drive-In franchisee
 - Stan Smith, owner, S&S Plumbing Business Properties
 - Jay Grinder, General Manager, Wilson’s Home Improvement
 - Andy Bishop, co-owner, Bishop Aviation
 - Garland County Judge Rick Davis

- Senator Alan Clark, Senate District 13
- Bob Driggers, retired electrical engineer

May 9, 2018

- A. Discussion of Cherokee Village water issues
 - Representative Scott Baltz,
 - Mayor Russell Stokes, City of Cherokee Village
 - Darrell Kehrl, Chairman, Sharp County Water Facilities Board
- B. Discussion of the Proposed Water Project for the Unincorporated Old Smokey Community, Grant County
 - Mayor Jeff Westbrook, Town of Tull
- C. Discussion of Expansion of Water Boundaries Facing the City of Sheridan and the Local Rural Water Association
 - Representative Kenneth Bragg
 - Gary Brown, Brown Consulting Services
 - David Fitzgerald, former manager, Sheridan Water Works
- D. Review of the Vision Statement and Recommendations by Task Force Members

May 23, 2018

- A. Discussion of Water Supply and Boundary Issues Faced by the City of Bella Vista and the Bella Vista Property Owners Association (POA)
 - Mayor Peter Christie, City of Bella Vista
- B. Discussion of the Hot Springs Municipal Water System and Issues Between the System and Property Owners
 - Bill Burrough, Deputy City Manager, City of Hot Springs
 - Bryan Albright, City Attorney, City of Hot Springs 1994 Consent Order directing the city to refrain from treating county land owners differently than city residents regarding access to water

July 11, 2018

- A. Discussion of the U.S. Chamber of Commerce Report *“Why Water Infrastructure Investments Would Make a Big Splash” – Investing in Water Infrastructure to Promote Economic Growth*
 - Mr. Kenny Hall, Executive Vice President, Arkansas State Chamber of Commerce, contacted the U.S. Chamber on behalf of the Task Force and arranged for one of the co-authors, of the article
 - Ms. Colleen Newman, to give an overview by telephone to the members during the meeting.
- B. Representative Fred Love requested a comprehensive water system study to be performed by the Arkansas Natural Resources Commission (ANRC) to assess current water systems and necessary improvements needed to have at hand a current cost assessment when federal dollars become available.
- C. Starting Questions for Drafting Final Recommendations of the Water Provider Legislative Task Force were discussed.

August 8, 2018 – Beaver Water District Facility

- A. Tour
- B. Presentation on Management, Operation, and Challenges of a Regional Drinking Water Utility from a Drinking Water Perspective

- Larry S. Lloyd, P.E., Chief Operating Officer, Beaver Water District
- C. Presentation on Management, Operation, and Challenges of a Wastewater Utility from a Wastewater Perspective
 - Rick Pulvirenti, P.E., Chief Operating Officer and Director of Engineering, Springdale Water Utilities
- D. Presentation and Discussion of Public Outreach and Educational Programs by Utilities to Educate the Public
 - Alan D. Fortenberry, P.E., Chief Executive Officer, Beaver Water District [Exhibit G]

August 22, 2018: meeting jointly:

1. Water Provider Legislative Task Force
 2. Senate Committee on Agriculture, Forestry, and Economic Development
 3. Senate Committee on City, County, and Local Affairs
 4. Senate Committee on State Agencies and Governmental Affairs
 5. House Committee on Agriculture, Forestry, and Economic Development
 6. House Committee on City, County, and Local Affairs
 7. House Committee on State Agencies and Governmental Affairs
- A. Comments and Introductions of U.S. Department of Agriculture (USDA) Personnel
 - David Branscum, Arkansas State Director, Rural Development, USDA:
 - B. Overview of the USDA Water and Waste Disposal Loan and Grant Program
 - Dr. Carrie Castille, Louisiana State Director, Rural Development, USDA
 - C. Overview of the Arkansas USDA Community Programs: Water/Wastewater & Community Facility
 - David Branscum, Arkansas State Director, Rural Development, USDA
 - Steve Lagasse, Arkansas Program Director, Rural Development, USDA

September 13, 2018

- A. Discussion of the Glen Rose Fire District and Rural Water Issues in Hot Spring County
 - Gerald Black, rural water customer, town of Perla's Water System
- B. Discussion of Volunteer Fire Departments, Water and Fire Hydrant Issues:
 - Chief David Steele, Shaw Volunteer Fire Department and ISO Consultant,
 - Dwayne Franklin, ISO Consultant,
 - Kendall Snyder, Fire/EMS Coordinator, AR Dept. of Emergency Management (ADEM).

September 26, 2018

- A. Discussion of the Process and Start of the Initial Drafting of the Final Report

October 10, 2018 (all-day meeting)

- A. Preliminary Drafting of the Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

October 25, 2018

- A. Discussion of Amended EPA Report "*Drinking Water Infrastructure Needs Survey and Assessment*" (Sixth Report to Congress)

- B. Discussion of Water Issues Between the City of Rockport and the City of Malvern
--Mayor Darrell Hughes, and Don Robinson, Alderman, City of Rockport
- C. Preliminary Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 8, 2018

- A. Continued drafting of Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 20, 2018 (all-day meeting)

- A. Continued drafting of Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 26, 2018

- A. Continued Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

December 4, 2018 (all-day meeting)

- A. “Arkansas Water Plan” Presentation
--Edward Swaim, Water Resources Division Manager, Arkansas Natural Resources Commission (ANRC)
- B. Continued Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017 [

December 12, 2018 (all-day meeting)

- A. Continued Review of the Draft Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

January 8, 2019

- A. Final Review of the Draft Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

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APPENDIX A

ACT 1056 of 2017

***“AN ACT TO CREATE THE WATER PROVIDER LEGISLATIVE
TASK FORCE; AND FOR OTHER PURPOSES”***

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ACT 1056 of 2017

Stricken language would be deleted from and underlined language would be added to present law.
Act 1056 of the Regular Session

1 ~~State of Arkansas~~ As Engrossed: S3/1/17 H3/27/17
2 91st General Assembly A Bill
3 Regular Session, 2017

SENATE BILL 376

4
5 [By: Senator A. Clark]

For An Act To Be Entitled

6
7
8 [AN ACT TO CREATE THE WATER PROVIDER LEGISLATIVE TASK
9 FORCE; AND FOR OTHER PURPOSES.

Subtitle

10
11
12
13 [TO CREATE THE WATER PROVIDER LEGISLATIVE
14 TASK FORCE.

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 [SECTION 1. DO NOT CODIFY.

19 Arkansas Water Provider Legislative Task Force.

20 (a) The General Assembly finds that:

21 (1) Utilities by their inherent nature are often monopolies;

22 (2) The people grant these monopolies as a way of enhancing
23 service and economic development and not the opposite;

24 (3) If service is being well provided, the most people possible
25 are enjoying the use of the service, and economic development is aided, then
26 it may be said the monopoly is being used well;

27 (4) If service is not well provided, many people are denied
28 service, and economic development is diminished or thwarted, then it may be
29 said the monopoly is not being used well;

30 (5) A monopoly should not be granted or allowed to continue in
31 the same hands if the people served or people who should be served are being
32 harmed;

33 (6) No utility provides a more basic need for human life and
34 economic development than a water provider;

35 (7) To this date in the state, no monopoly has been given more
36



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1 power to decide whether to serve or not to serve than a water provider;

2 (8) It has been brought into question if water providers in some
3 locales are doing the best job to provide the best service to the most people
4 and to enhance economic development;

5 (9) To determine whether a water provider is providing
6 adequately or not in exchange for the monopoly granted, there need to be
7 standards by which to judge the water providers; and

8 (10) The people of this state deserve to have a fair set of
9 standards when seeking to obtain a service so basic to human life.

10 (b) The General Assembly intends that a water provider:

11 (1) Should not have to provide water outside the areas that the
12 water provider has agreed to serve;

13 (2) Does not have to bear any cost to provide new service within
14 the service area unless the water provider bears that cost for the same type
15 of new service to all customers within the service area;

16 (3) May set rates that vary by location and political
17 subdivision, unless the water provider has required an agreement to do
18 otherwise when service is established; and

19 (4)(A) Shall not be required to extend water lines or provide
20 water for any area that the water provider has not agreed to serve.

21 (B) As used in this subdivision (b)(4), "agreed to serve"
22 means any area that the water provider has agreed to serve by original
23 charter and any area the water provider has agreed to serve in subsequent
24 actions, including without limitation accepting water lines and providing
25 service.

26 (C) All areas within the platted area of a municipality or
27 water district shall be included whether or not there is a water main
28 directly adjacent to a water customer.

29 (c) The General Assembly intends that a water customer:

30 (1) Within a service area of a water provider, shall not be
31 discriminated against based on race, gender, marital status, religion, or the
32 political subdivision within which the water customer resides, except that:

33 (A) Different types of water customers may have different
34 sets of rules as may be practical for those type of divisions; and

35 (B) This subdivision (c)(1) does not affect a water
36 provider's right to set different rates for water itself, based on geographic

1 location or political subdivision;

2 (2) Within a water provider service area, cannot be made to meet
3 new requirements to obtain water unless all similar water customers,
4 regardless of location, also meet those requirements; and

5 (3) Within a service area already serviced by a water provider,
6 shall not be required to annex into a municipality or other political
7 subdivision if that requirement was not in place when the area became part of
8 the water provider's service area.

9 (d)(1) To provide a better water provider system, to aid in obtaining
10 basic water service for as many Arkansans as possible, and to enhance
11 economic development in the state, there is established the Water Provider
12 Legislative Task Force.

13 (2)(A) The task force shall study and provide a blueprint for
14 water security and development for the state.

15 (B) The blueprint shall include the best practices for
16 providing water to the most citizens in as broad a way and as economically as
17 possible and providing for the water needs and practices to bring economic
18 development to the state in a dependable and structured way.

19 (3) The task force shall consist of the following:

20 (A) The President Pro Tempore of the Senate or his or her
21 designee;

22 (B) The Speaker of the House of Representatives or his or
23 her designee;

24 (C) The Chair of the Senate Committee on City, County, and
25 Local Affairs or his or her designee;

26 (D) The Chair of the House Committee on City, County, and
27 Local Affairs or his or her designee;

28 (E) A member of the minority party of the General Assembly
29 to be appointed by the President Pro Tempore of the Senate and the Speaker of
30 the House of Representatives;

31 (F) A member of the majority party of the General Assembly
32 to be appointed by the President Pro Tempore of the Senate and the Speaker of
33 the House of Representatives;

34 (G) The Executive Director of the Arkansas Natural
35 Resources Commission or his or her designee;

36 (H) The Executive Director of the Arkansas Economic

1 Development Commission or his or her designee;

2 (I) The Chair of the Arkansas State Chamber of Commerce or
3 his or her designee;

4 (J) A member or staff person of the Arkansas Municipal
5 League to be appointed by the Speaker of the House of Representatives;

6 (K) A member or staff person of the Association of
7 Arkansas Counties to be appointed by the President Pro Tempore of the Senate;

8 (L) An active Arkansas home builder to be appointed by the
9 Governor;

10 (M) A member of the Arkansas Rural Water Association to be
11 designated by the Chief Executive Officer of the Arkansas Rural Water
12 Association;

13 (N) A member of the Arkansas Water Environment Association
14 to be designated by the President of the Arkansas Water Environment
15 Association;

16 (O) A member of the Arkansas Water and Wastewater Managers
17 Association to be designated by the President of the Arkansas Water and
18 Wastewater Managers Association;

19 (P) A member of the Arkansas Water Works and Water
20 Environment Association to be designated by the Chair of the Arkansas Water
21 Works and Water Environment Association;

22 (Q) A member of Central Arkansas Water to be designated by
23 the Chief Executive Officer of Central Arkansas Water; and

24 (R) A consumer advocate with water conservation knowledge
25 or interest from the staff or membership of the Arkansas Citizens First
26 Congress or the staff's or membership's designee, to be appointed by the
27 Governor.

28 (4) The legislative members of the task force shall choose a
29 chair and vice chair from within their number to lead the task force.

30 (5) All members of the task force are voting members for the
31 purpose of setting agendas, establishing quorums, putting together reports,
32 and all other purposes.

33 (6) The task force is tasked with providing:

34 (A) A vision report for where Arkansas should be in the
35 future;

36 (B) An action report;

1 (C) Best practices for providing new service and any other
2 area the task force chooses to report on; and

3 (D) A report on all tasks completed by January 1, 2019, to
4 the Governor, the Director of the Arkansas Economic Development Commission,
5 the Arkansas State Chamber of Commerce, the Arkansas Municipal League, the
6 Association of Arkansas Counties, water providers, and the members of the
7 Senate Committee on City, County, and Local Affairs and the House Committee
8 on City, County, and Local Affairs of the Ninety-Second General Assembly.

9 (7)(A) The task force shall conduct its meetings at the State
10 Capitol Building or another site selected by the chair.

11 (B) Meetings of the task force shall be held at least one
12 (1) time every three (3) months but may occur more often at the call of the
13 chair.

14 (C) The President Pro Tempore of the Senate and the Speaker
15 of the House of Representatives shall:

16 (i) Call the first meeting of the task force within
17 sixty (60) days of the effective date of this act; and

18 (ii) Act as joint chairs of the task force at the
19 first meeting.

20 (8) The task force shall establish rules and procedures for
21 conducting its business.

22 (9) If a vacancy occurs on the task force, the vacancy shall be
23 filled in the same manner as the original appointment.

24 (10)(A) Legislative members of the task force shall be paid per
25 diem and mileage as authorized by law for attendance at meetings of interim
26 committees of the General Assembly.

27 (B) Nonlegislative members of the task force shall serve
28 without compensation but may receive reimbursement under § 25-16-902.

29 (11)(A) A majority of the members of the task force shall
30 constitute a quorum for transacting business of the task force.

31 (B) No action may be taken by the task force except by a
32 majority vote at a meeting at which a quorum is present.

33 (12) The task force may expend funds and resources in carrying
34 out its purpose and responsibilities that are appropriated or funded to the
35 task force by the General Assembly or a third party.

36 (13) The task force expires on January 1, 2019.

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/s/A. Clark

APPROVED: 04/06/2017

APPENDIX B

TASK FORCE RULES OF PROCEDURE

2017-2018

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WATER PROVIDER LEGISLATIVE TASK FORCE
(Act 1056 of 2017)
RULES OF PROCEDURE

PURPOSE: The purpose of these rules is to establish rules and procedures for conducting the business of the **Water Provider Legislative Task Force** and to inform the members of the Arkansas General Assembly and the public of the procedures and rules of the task force.

DUTIES:

1. The task force is required by Act 1056 of 2017 to:
 - a. Study and provide a blueprint for water security and development for the state; and
 - b. Recommend best practices to enhance economic development in the state through a dependable and structured way to aid as many Arkansans as possible in obtaining basic water service
2. On or before January 1, 2019, the task force is tasked with providing a Vision Report on where Arkansas should be in the future, an Action Report, and Best Practices for providing new service, plus any other area the task force chooses to report on.
3. On or before January 1, 2019, the task force is to provide a report on all tasks completed to the Governor, the Director of the Economic Development Commission, the Arkansas State Chamber of Commerce, the Arkansas Municipal League, the Association of Arkansas Counties, water providers, and the members of the Senate Committee on City, County, and Local Affairs and the House Committee on City, County, and Local Affairs of the Ninety-Second General Assembly.
4. The task force expires on January 1, 2019.

PARLIAMENTARY PROCEDURE: Except as otherwise specified by these rules, the rules of the Arkansas House of Representatives and the Arkansas Senate shall be observed by the task force, insofar as they are applicable. If an applicable rule does not exist or the House and Senate rules are incompatible, the chair(s) shall decide the issue.

1. **Quorum.** The task force is made up of six (6) members of the General Assembly and twelve (12) non-legislative members. A majority of the all the members of the task force shall constitute a quorum for transacting business of the task force.
2. **Action.** No action may be taken by the task force except by a majority vote at a meeting at which a quorum is present.
3. **Roll Call.** The task force shall vote by voice vote unless a roll call vote is requested by two (2) or more task force members. Roll call votes shall be recorded in the meeting minutes.
4. **Motions.** A motion shall receive a second to be considered for action by the task force.
5. **Public Comment.** The chair may provide the public an opportunity to speak during a task force meeting to allow for public comment on issues before the task force. Those who testify before the task force who have grievances will be sworn in under oath.
6. **Minutes.** Staff shall produce minutes of each task force meeting to be adopted by the task force at the subsequent scheduled meeting.

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APPENDIX C

SENATE BILL 481 of 2019

***“AN ACT TO AMEND THE LAW CONCERNING WATER AND
WASTEWATER PROVIDERS AND RELATED SERVICE; AND FOR
OTHER PURPOSES”***

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Senate Bill 481 of 2019

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

A Bill

SENATE BILL 481

4
5 By: Senator A. Clark

For An Act To Be Entitled

6
7
8 AN ACT TO AMEND THE LAW CONCERNING WATER AND
9 WASTEWATER PROVIDERS AND RELATED SERVICE; AND FOR
10 OTHER PURPOSES.

Subtitle

11
12
13
14 TO AMEND THE LAW CONCERNING WATER AND
15 WASTEWATER PROVIDERS AND RELATED SERVICE.

16
17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 14-43-303(a), concerning officials in
21 mayor-council cities of the first class of 50,000 or more, is amended to read
22 as follows:

23 (a)(1)(A) ~~In~~ Except as provided under § 14-229-204(c), in the general
24 election in the year 1960, and every four (4) years thereafter, cities of the
25 first class that have a population of fifty thousand (50,000) persons or
26 more, according to the latest decennial federal census or special federal
27 census, and that also have the mayor-council form of government shall elect
28 the following officials:

29 (i) One (1) mayor;
30 (ii) One (1) city clerk; and
31 (iii) One (1) council member from each ward of the
32 city.

33 (B) All of these officials shall hold office for a term of
34 four (4) years and until their successors are elected and qualified.

35 (2)(A) ~~At~~ Except as provided under § 14-229-204(c), at the
36 general election in the year 1962 and every four (4) years thereafter, the



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1 city shall elect:

- 2 (i) One (1) city attorney;
3 (ii) One (1) city treasurer; and
4 (iii) One (1) council member from each ward of the
5 city.

6 (B) All of these officials shall hold office for a term of
7 four (4) years and until their successors are elected and qualified.

8
9 SECTION 2. Arkansas Code § 14-43-312(a)(1), concerning council members
10 in mayor-council cities of the first class of fewer than 50,000, is amended
11 to read as follows:

12 (a)(1) ~~On~~ Except as provided under § 14-229-204(c), on the Tuesday
13 following the first Monday in November 1966 and every two (2) years
14 thereafter, the qualified voters of all cities of the first class having the
15 mayor-council form of government with fewer than fifty thousand (50,000)
16 inhabitants shall elect two (2) council members from each ward for a term of
17 two (2) years, except that by ordinance any city of the first class may refer
18 the question to voters to elect two (2) council members from each ward to
19 four-year terms as more particularly set out in subdivision (a)(2)(A) of this
20 section.

21
22 SECTION 3. Arkansas Code § 14-44-103(a)(1), concerning the election of
23 council members in a city of the second class, is amended to read as follows:

24 (a)(1) Except as provided under subdivision (a)(3) of this section and
25 § 14-229-204(c), on the Tuesday following the first Monday in November 1982,
26 and every two (2) years thereafter, the qualified voters in cities of the
27 second class shall elect for each of the wards of these cities two (2)
28 council members, who shall compose the city council.

29
30 SECTION 4. Arkansas Code § 14-45-102(a)(1), concerning the election of
31 council members in an incorporated town, is amended to read as follows:

32 (a)(1) Except as provided in subdivision (a)(2) of this section and §
33 14-229-204(c), on the Tuesday following the first Monday in November 1982 and
34 every two (2) years thereafter, the qualified voters of incorporated towns
35 shall elect five (5) council members.

36

1 SECTION 5. Arkansas Code § 14-47-109(a)(1), concerning the board of
2 directors in a city manager form of government, is amended to read as
3 follows:

4 (a)(1) ~~The~~ Except as provided under § 14-229-204(c), the seven (7)
5 directors elected by a city reorganized under this chapter shall be known and
6 designated as the board of directors of that city.

7
8 SECTION 6. Arkansas Code § 14-48-110(a)(1), concerning the board of
9 directors in a city administrator form of government, is amended to read as
10 follows:

11 (a)(1) ~~The~~ Except as provided under § 14-229-204(c), the seven (7)
12 directors elected by a city reorganized under this chapter shall be known and
13 designated as the board of directors of the city.

14
15 SECTION 7. Arkansas Code § 14-201-105(a)(1), concerning the members of
16 a municipal utility commission in a city of the first class, is amended to
17 read as follows:

18 (a)(1) ~~Any~~ Except as provided under § 14-229-204(c), any city of the
19 first class in which it is desired to establish such a utility commission, by
20 a majority vote of the city council, shall enact an ordinance creating a
21 commission to be composed of five (5) citizens who are qualified electors of
22 the county and not less than thirty-five (35) years of age.

23
24 SECTION 8. Arkansas Code § 14-201-204(a), concerning the members of a
25 municipal utility board or commission in certain cities of the first class,
26 is amended to read as follows:

27 (a) Any city of the first class subject to the provisions of this
28 subchapter owning, operating, or controlling a municipal light and power
29 plant, ~~or~~ sewer plant, or water plant is authorized by a proper ordinance
30 passed by the city council of the city and approved by its mayor to create a
31 board consisting of five (5) members for the purpose of directing, managing,
32 controlling, and operating the plant within the city or in any area in which
33 the city may be lawfully authorized to operate outside the city limits
34 thereof, except as provided in § 14-201-202 and § 14-229-204(c).

35
36 SECTION 9. Arkansas Code § 14-201-312(a), concerning the members of a

1 municipal board of public utilities in a city of the second class or an
2 incorporated town, is amended to read as follows:

3 (a) Boards Except as provided under § 14-229-204(c), boards of public
4 utilities, when created in the manner set out in this subchapter, shall be
5 composed of five (5) members, each of whom, at the time of his election shall
6 not be less than twenty-five (25) years ~~old~~ of age and a resident and owner
7 of real estate in one (1) or more of the improvement districts owning the
8 light or water plants or sewerage systems coming under the control of the
9 board of public utilities as provided.

10

11 SECTION 10. Arkansas Code Title 14, Chapter 229, is amended to add an
12 additional subchapter to read as follows:

13 Subchapter 2 – Oversight of Water and Wastewater Service Providers

14

15 14-229-201. Definition – Findings.

16 (a) As used in this subchapter, "provider" means any provider of water
17 or wastewater service.

18 (b) The General Assembly finds that:

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

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

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

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

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

35 (6) Training of local, state, and federal leaders on issues
36 surrounding water provider personnel, finances, compliance, and environmental

1 factors is needed; and

2 (7) Education of public school students regarding the importance
3 of water is necessary.

4
5 14-229-202. Fiscal distress – Improvement plans – Rates and rate
6 studies.

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

9 (A) Fails to obtain a rate study as required by this
10 section;

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

13 (C) Has been found by the Arkansas Department of
14 Environmental Quality or the Department of Health to be in significant
15 noncompliance with rules of the Arkansas Department of Environmental Quality
16 or the Department of Health because of inadequate funds for operation,
17 maintenance, and compliance.

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

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

23 (A) Evaluate, determine, and mandate the implementation of
24 rates necessary to adequately address current and future costs under this
25 section;

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

28 (C) Mandate and assist the provider in developing an
29 improvement plan to address fiscal, operational, refurbishment, and
30 replacement concerns.

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

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

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

36 (B) By July 1, 2023, and every five (5) years thereafter

1 for a provider that serves five hundred one (501) to one thousand (1,000)
2 customers; and

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

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

6 (i) Operation and maintenance;

7 (ii) Debt service;

8 (iii) Required reserves;

9 (iv) Depreciation;

10 (v) Future capital expenses;

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

13 (vii) Other expenses as necessary.

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

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

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

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

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

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

33 (f)(1) The commission shall maintain an approved list of entities to
34 conduct rate studies required by this section, including without limitation
35 professional engineers, certified public accountants, economists, and
36 actuaries.

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

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

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

11 (B) There is no other viable alternative.

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

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

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

19 (C) Complete a technical, financial, and managerial
20 capacity review conducted by the Department of Health or the Arkansas
21 Department of Environmental Quality.

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

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

30 (i) A provider shall file its most recent rate study annually with
31 Arkansas Legislative Audit at the same time the provider files its audit
32 report or agreed-upon procedures and compilation report as required under §
33 14-234-120.

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

36 (2) The provider may appeal the finding to the Pulaski County

1 Circuit Court.

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

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

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

10 (ii) Modify the improvement plan; or

11 (iii) Deny the improvement plan.

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

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

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

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

21 (iv) Take steps to reorganize, restructure, or
22 consolidate the provider.

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

26 (l) If a provider is found to be in fiscal distress, the provider
27 shall not receive state financial assistance for water or wastewater
28 operations until an approved improvement plan is in place as approved by the
29 commission, unless the financial assistance is for the purposes under
30 subdivision (b)(1) of this section or is immediately necessary to ensure
31 preservation of the public peace, health, and safety, as determined by the
32 commission.

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

35 (1) Incur additional debt;

36 (2) Accept assistance for the refurbishment or replacement of

1 facilities or construction of facilities not within the provider's
2 improvement plan; or

3 (3) Transfer assets to another entity.
4

5 14-229-203. Workforce recruitment and retention – Education.

6 A provider shall:

7 (1) Work with the Arkansas Municipal League and the Association
8 of Arkansas Counties to develop training for leaders of the political
9 subdivision;

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

12 (3) Promote the recruitment, education, and licensing of
13 provider employees.
14

15 14-229-204. Municipal providers – Provision of water to nonresident
16 customers.

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

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

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

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

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

33 (3) Failure to clearly define any annexation requirement within
34 the executed agreement prohibits the municipal provider from requiring
35 annexation in exchange for service for those areas without agreement from the
36 affected property owners.

1 (c) If a municipal provider services customers outside the municipal
2 boundaries of the municipal provider:

3 (1)(A) One (1) additional member from the area served shall be
4 added to the municipal provider board for every twenty percent (20%) of
5 customers outside the municipal provider's municipal boundaries, up to two
6 (2) additional members.

7 (B) A member added to a municipal provider board under
8 subdivision (c)(1)(A) of this section shall be named by and serve at the
9 pleasure of the county judge, subject to approval by the municipal provider
10 board; and

11 (2)(A) A separate governing board shall be created under
12 applicable law for the municipal provider if a separate governing board does
13 not exist for the municipal provider apart from the governing body of the
14 political subdivision.

15 (B) A person serving on the governing body of the
16 political subdivision may also serve on a separate governing board for the
17 municipal provider.

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

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

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

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

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

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

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

34
35 14-229-205. Training.

36 (a)(1)(A) Within one (1) year of election or appointment, a majority

1 of the members of a provider board shall receive a minimum of eight (8) hours
2 of provider training as promulgated by rule of the Arkansas Natural Resources
3 Commission.

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

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

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

12 (1) The Director of the Department of Health or his or her
13 designee;

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

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

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

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

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

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

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

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

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

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

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

36 (13) The Chair of the Senate Committee on City, County, and

1 Local Affairs; and

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

4

5 14-229-206. Rules.

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

8 (b)(1) When adopting the initial rules to implement this subchapter,
9 the final rule shall be filed with the Secretary of State for adoption under
10 § 25-15-204(f):

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

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

14 (2) The commission shall file the proposed rule with the
15 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
16 2020, so that the Legislative Council may consider the rule for approval
17 before January 1, 2020.

18

19 SECTION 11. Arkansas Code § 14-234-303(a), concerning the
20 commissioners of a waterworks commission in a city of the first or second
21 class, is amended to read as follows:

22 (a) ~~Any~~ Except as provided under § 14-229-204(c), any city of the
23 first class or city of the second class may enact an ordinance by a majority
24 vote of the elected and qualified members of its city council creating a
25 waterworks commission to be composed of no less than three (3) nor more than
26 seven (7) citizens who are qualified electors of the municipality or who are
27 qualified electors of the area served by the municipality.

28

29 SECTION 12. Arkansas Code § 14-235-208(a)(2)(A)(i), concerning the
30 members of a sanitary board, is amended to read as follows:

31 (2)(A)(i) ~~A~~ Except as provided under § 14-229-204(c), a sanitary
32 board shall be composed of the mayor of the municipality and two (2) persons
33 appointed by the council.

34

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