Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

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Proposed Rulemaking

Title

Promulgated by:
Department of Agriculture
Arkansas Natural Resources Commission

Title 14. Local Government

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter A. Generally

Part 2. Oversight of Retail Water, Wastewater, and Sewer Providers

Subpart 1. Generally

14 CAR § 2-101. Purpose.

(a) The purpose of this part is to:

(1) Implement Arkansas Code §§ 14-234-801 et seq. and 14-239-201 et seq.;

(2) Provide oversight of retail water, wastewater, and sewer providers to promote efficiency in service and stability in fiscal management;

(3) Provide training and education to governing bodies of retail water, wastewater, and sewer providers; and

(4) Provide training of local, state, and federal leaders on the issues surrounding provider:

(A) Personnel;

(B) Finances;

(C) Compliance; and

(D) Environmental factors.

(b) This part shall be read in conjunction with Arkansas Code §§ 14-234-801 et

seq. and 14-239-201 et seq.

14 CAR § 2-102. Definitions.

The following definitions are supplemental to the definitions in Arkansas Code §§ 14-234-801 et seq. and 14-239-201 et seq:

(1) "Annualized revenue requirement" means the projected revenue if the recommended increase, as well as all previous recommended increases, is in effect for the full twelve-month period;

(2) ~~"Commission" means the Arkansas Natural Resources Commission;~~

~~(3)~~ "Debt service coverage ratio" means net operating income divided by total debt service;

~~(4) "Department" means the Department of Agriculture, including the Natural Resources Division thereof;~~

(~~5~~3) "Future capital expenses" means the design and construction of new and replacement infrastructure, including any associated labor and fees;

(~~6~~4) "Net operating income" means earnings before interest, tax, depreciation, and amortization less capital expenditures;

(~~7~~5) "Nonoperating revenue" means revenue derived from sources other than water use charges;

(~~8~~6) "Provider board" as used herein shall have the definition provided in Arkansas Code §§ 14-234-801(b)(3) and 14-239-202(2);

(~~9~~7) "System" means:

(A) For a provider that provides water service only, the provider's water system;

(B) For a provider that provides water service and sewer service, but where the water system and the sewer system are not operated as a joint and integrated undertaking (i.e., when a separate audit is prepared for water and for sewer), the provider's water system; ~~and~~

(C) For a provider that provides water service and sewer service, and the water facilities are operated as a joint and integrated undertaking (i.e., when water and

sewer are combined in a single audit), the provider's joint and integrated water and sewer system; or ~~and~~

(D) For a provider that provides sewage collection or sewage treatment service only, the provider's sewer system; and

(~~10~~8) "Total debt service" means current debt obligations, including but not limited to any interest, principal, sinking fund, and lease payments due in a given year.

14 CAR § 2-103. Refurbishment and replacement account.

(a) Providers may designate existing depreciation or replacement accounts as the refurbishment and replacement account required by Arkansas Code §§ 14-234-802(e) and 14-239-203(e), so long as the amount deposited therein complies with the provisions of Arkansas Code §§ 14-234-802(e) and 14-239-203(e).

(b) The calculation of the amount required to be deposited into a refurbishment and replacement account pursuant to this part and Arkansas Code §§ 14-234-802(e) and 14-239-203(e) shall be based on the gross operating revenues of a system.

(c) Utilization of funds from the refurbishment and replacement account must be approved by the provider board prior to its use.

14 CAR § 2-104. Rate studies for retail water, wastewater, and sewer providers.

(a)(1) Retail water, wastewater, and sewer providers shall obtain rate studies pursuant to the requirements in Arkansas Code §§ 14-234-802 and 14-239-203.

(2) A rate study that is older than eighteen (18) months on the date submitted or on the date due under Arkansas Code §§ 14-234-802(c)(1) or 14-239-203(c)(1) will not be accepted unless the rate study provider certifies that the current and future projections are valid and comply with (b)(2)(A) of this section.

(b)(1) Rate studies shall be based on the guidelines of the American Water Works Association and the Water Environment Federation.

(2) The rate studies shall include:

(A) Reports containing the following information for the current year and

projections for the next five (5) years:

(i) A comprehensive cost analysis, including:

(a) Operations and maintenance (O&M) expenses;

(b) Financing expenses, including but not limited to debt service payments, bond issuance costs, and commercial paper fees, if applicable;

(c) Any required cash reserves unavailable to pay for expenses, including but not limited to the annual refurbishment and replacement account deposit requirement as set out in Arkansas Code §§ 14-234-802(e) and 14-239-203(e);

(d) Depreciation expenses;

(e) Future capital expenses;

(f) Expenses required for an annual audit or agreed-upon procedures and compilation report;

(g) Expenses required for rate studies required under Arkansas Code §§ 14-234-802 and 14-239-203; and

(h) Any other expenses not accounted for in subdivisions (b)(2)(A)(i)*(a)* – *(g)* of this section;

(ii) A comprehensive revenue earnings analysis, including:

(a) Available cash balance;

(b) Nonrate revenue; and

(c) Rate revenue without recommended increases;

(iii) For the five (5) projected years, recommended rate increases and the projected additional revenue derived therefrom;

(iv) Debt service coverage ratios;

(v) The number of days that the available cash balance could cover O&M expenses without additional revenue; and

(vi) Annualized revenue requirement;

(B) The provider's asset management plan, including:

(i) Inventory of essential assets and for each essential asset, without limitation, the following information:

(a) Asset type;

(b) Annual maintenance costs;

(c) Year installed;

(d) Vendor-specified useful life, if available;

(e) Anticipated date of replacement;

(f) Installation or replacement cost estimate; and

(g) Projected consequence of failure; and

(ii) The provider's plan for replacement of essential assets;

(C) Proposed changes in rates should be based on achieving and maintaining a debt service coverage ratio of 1.1 or higher;

(D) An explanation of the provider's chosen rate design;

(E) Recommendations for any changes to the provider's operations, including a plan on how the changes should be implemented; and

(F) Certification by the entity performing the rate study that such study complies with:

(i) Arkansas Code §§ 14-234-801 et seq. or 14-239-201 et seq., whichever is applicable; and

(ii) This part.

(3) Rate studies shall be provided to the Department of Agriculture at the time they are provided to Arkansas Legislative Audit under Arkansas Code §§ 14-234-802(i) and 14-239-203(h).

(4) The ~~Arkansas Natural Resources Commission~~department may request further information necessary to determine a provider's fiscal status, and providers shall cooperate with the ~~commission's~~ department's requests.

(5) The ~~commission~~ department may waive any one (1) or more requirement in subdivision (b)(2) of this section, upon written request.

(c) Rate studies for providers that operate a joint and integrated water and sewer system shall analyze the total system.

(d) Rate studies performed shall be an objective and unbiased review of the provider's fiscal status.

(e)(1) The ~~commission~~ department will maintain a list of approved entities to

conduct rate studies as required under Arkansas Code §§ 14-234-802(f)(1) and 14-239-203(f)(1).

(2) The ~~commission~~ department may remove an approved entity from its list of approved entities if it determines that an entity violated Arkansas law or ~~commission~~ rules of the Arkansas Natural Resources Commission in performing a rate study.

(f) Submission of the provider's rate study shall be in accordance with timelines required under Arkansas Code §§ 14-234-802(c)(1) and 14-239-203(c)(1).

(g) Providers that completed a combined water, wastewater, and sewer rate study in accordance with Arkansas Code § 14-234-802(c)(1) will continue to adhere to the schedule under which the combined rate study was submitted unless the provider submits a written request to the department to separate the water rate study from the wastewater and sewer rate study and initiate a new schedule.

14 CAR § 2-105. Determinations of fiscal distress.

(a) A provider will be in fiscal distress if the provider fails to:

(1) Obtain a rate study as required;

(2) Implement the rates contained in the completed rate study within the time requirements provided under Arkansas Code §§ 14-234-802(c)(2)(B)(ii) – (iv) and 14-239-203(c)(2)(B)(ii) – (iv); or

(3) Maintain a debt service coverage ratio of 1.05 or higher.

(b) A provider may be determined to be in fiscal distress if the provider:

(1) Does not comply with the training required by:

(A) Arkansas Code §§ 14-234-805 or 14-239-205, whichever is applicable; and

(B) 14 CAR § 2-107;

(2) Fails to file with Arkansas Legislative Audit an audit report or agreed-upon procedures and compilation report required by Arkansas Code § 14-234-120;

(3) Fails to maintain unencumbered cash or cash equivalents in an amount equal to one-twelfth (1/12) of the total expenses from the most recent fiscal year;

(4) Fails to adopt a budget before the beginning of a new fiscal year providing

for sufficient revenues to meet or exceed anticipated expenses during that fiscal year;

(5) Fails to make all required payments due to the:

(A) Internal Revenue Service;

(B) Department of Finance and Administration; or

(C) Department of Health;

(6) Fails to make any bond, loan, or lease payment; or

(7) Fails to comply with an administrative order of the United States Environmental Protection Agency, Department of Health, or Division of Environmental Quality concerning operation and maintenance of the system.

(c) Providers determined to be in fiscal distress shall submit to the Department of Agriculture an improvement plan as required in Arkansas Code § 14-234-802(k) and 14-239-203(k) detailing in writing the provider's plan to resolve:

(1) The violation or violations of rule or law; or

(2) Its fiscal insufficiency that caused it to be considered in fiscal distress.

(d) A provider will be determined by the ~~Arkansas Natural Resources Commission~~Department of Agriculture to no longer be in fiscal distress if the provider:

(1) Resolves the violation of rule or law that caused it to be considered in fiscal distress and obtains written verification from the ~~commission~~ Department of Agriculture that the violation has been resolved; or

(2) Implements a change of rates that is shown by the study to resolve the provider's fiscal insufficiency.

14 CAR § 2-106. Miscellaneous.

(a) A provider seeking approval from the Arkansas Natural Resources Commission under Arkansas Code § 14-234-802(g) shall demonstrate its fiscal sustainability by submitting to the commission a business plan demonstrating its technical, financial, and managerial capacity.

(b)(1) Pursuant to provisions relating to commission intervention under the conditions provided for in Arkansas Code § 14-234-804(d), upon request of a municipal provider or a customer or unserved customer of a municipal provider, the Department

of Agriculture will assist in the resolution of the issue or issues if the party or parties involved demonstrate that all parties involved made a good faith effort to resolve the issue or issues.

(2) Such intervention may include without limitation negotiation or mediation with the party or parties involved.

(3) If the department determines that a party is not acting in good faith, the department may end its intervention.

14 CAR § 2-107. Training.

(a)(1) A majority of the members of a provider board~~s~~ shall receive a minimum of eight (8) hours of provider training.

(2) Members of a combined water, wastewater, and sewer system provider board must complete twelve (12) hours of training to include at least four (4) hours of applicable regulatory and statutory content, four (4) hours of water system operation basics, and four (4) hours of wastewater operation basics.

(b) If a change in membership of a provider board causes the provider board to have less than a majority of members who have undergone provider training, enough members of the provider board shall receive provider training within one (1) year of the change in membership such that a majority of the board has received training.

(c) Each provider board shall report the following information annually, by January 31, to the Department of Agriculture:

(1) The names and contact information of each member on the provider board;

(2) An identification of which members have obtained eight (8) hours of provider training; and

(3) An identification of which members:

(A) Have served on the board for more than ten (10) years; and

(B) Are exempt from the training requirement pursuant to Arkansas Code §§ 14-234-805(c) and 14-239-205(a)(3).

State of Arkansas *As Engrossed: H3/20/25 S4/7/25*
95th General Assembly
A Bill
Regular Session, 2025 HOUSE BILL 1701

By: Representatives Gonzales, L. Johnson
By: Senator G. Stubblefield

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING SEWER COLLECTION AND SEWER TREATMENT PROVIDERS AND RELATED SERVICES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING SEWER COLLECTION AND SEWER TREATMENT PROVIDERS AND RELATED SERVICES.

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

SECTION 1. Arkansas Code Title 14, Chapter 239, is amended to add an additional subchapter to read as follows:

Subchapter 1 — Oversight of Wastewater and Sewer Retail Providers

14-239-101. Legislative findings.

The General Assembly finds that:

(1) Oversight of providers in the state is primarily handled by the Arkansas Natural Resources Commission and the Division of Environmental Quality;

(2) Wastewater and sewer systems need to have rates that support capital improvement needs; and

(3) It is necessary to improve the operations and infrastructures of wastewater and sewer systems in the state similar to the reform of retail water providers by Acts 2021, No. 605.

14-239-102. Definitions.

As used in this subchapter:

(1) "Provider" means any public or private provider of a sewage collection service or sewage treatment service; and

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

14-239-103. Fiscal distress — Improvement plans — Rates and rate studies — Definition.

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

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

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

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

(2) A provider may be found by *the commission* to be subject to this section if a member of the provider's board does not receive the training required under § 14-239-105.

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

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

(A) By July 1, 2028, and every five (5) years thereafter for a provider that serves five hundred (500) or fewer customers;

(B) By July 1, 2029, and every five (5) years thereafter for a provider that serves not less than five hundred one (501) and not more than one thousand (1,000) customers; and

(C) By July 1, 2030, and every five (5) years thereafter for a provider that serves more than one thousand (1,000) customers.

(2)(A) Rates and other revenue dedicated to the support of the provider's wastewater and sewer systems shall adequately address costs for:

(i) Operation and maintenance;

(ii) Debt service;

(iii) Required reserves;

(iv) Depreciation;

(v) Future capital expenses;

(vi) Preparation and publication of an annual financial report as currently required by law; and

(vii) Other expenses as necessary.

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

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

(iii) Except as provided in subdivision (c)(2)(B)(iv) of this section, if recommended rates increase the provider's rates by fifty percent (50%) or more from the fiscal year before the rate study was completed, the provider may phase in the rate increase over a two-year period.

(iv) If, through the rate study, it is recommended that a series of rate increases be implemented over a period of time that exceeds the periods of time required in subdivisions (c)(2)(B)(ii) and (c)(2)(B)(iii) of this section, the provider may implement the series of rate increases without regard to the limitations of subdivisions (c)(2)(B)(ii) and (c)(2)(B)(iii) of this section, provided that the series of rate increases conform with the recommendations of the rate study.

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

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

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

(e)(1) A provider shall deposit a minimum of five percent (5%) per annum of gross revenues in a dedicated refurbishment and replacement account.

(2) The provider may spend any amount of the provider's cash savings referenced in subdivision (e)(1) of this section at any time for refurbishment and replacement of the provider's *wastewater system* facilities and other real property.

(3) If a different amount to be deposited per annum is determined by a rate study, then the amount determined by the rate study shall be deposited into a dedicated refurbishment and replacement account.

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

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

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

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

(B) There is no other viable alternative.

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

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

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

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

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

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

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

Circuit Court.

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

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

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

(ii) Modify the improvement plan; or

(iii) Deny the improvement plan.

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

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

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

(1) Incur additional debt;

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

(3) Transfer assets to another entity.

14-239-104. Workforce recruitment and retention — Education.

A provider shall:

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

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

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

14-239-105. Training.

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

(B) A member of a provider's board as of January 1, 2025, shall receive the training required under this section by December 31, 2026.

(2) If a majority of the members of a provider's board do not receive the training required under this section, the commission may find the provider is subject to § 14-239-103.

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

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

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

(2) The Director of the *Division of Environmental Quality* or his or her designee;

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

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

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

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

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

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

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

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

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

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

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

(14) The President of the Arkansas Water and Wastewater Managers Association, Inc.

14-239-106. Applicability.

This subchapter does not apply to:

(1) A wastewater system regulated by the Arkansas Public Service Commission as a public utility under § 23-1-101 et seq.;

(2) A municipal utility system owned or operated by a municipality that provides electric service to retail customers in addition to wastewater service, including without limitation an electric system:

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

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

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

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

(5) A provider during the time that the provider is subject to a federal court decree or judgment for remediation efforts related to the provider's water system or wastewater system, or both, for the purpose of compliance with federal law; or

(6) An individual homeowner.

14-239-107. Rules.

The Arkansas Natural Resources Commission shall promulgate rules to implement this subchapter.

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

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

(1) On or before January 1, 2026; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2026, as soon as practicable after approval under § 10-3-309.

(b) *The commission* shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2026, so that the Legislative Council may consider the rules for approval before January 1, 2026.

/s/Gonzales

APPROVED: 4/21/25