

Arkansas Natural Resources Commission
Rules Governing Water Authorities
Title 17
(Effective September 15, 2014)

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Subtitle I. General provisions

Section 1701.1 Purpose and enabling legislation.

These rules implement Title Four, Chapter Thirty Five, Subchapters One and Two of the Arkansas Code Annotated, by establishing a procedure by which two or more persons or a qualified corporation may form or convert to a water authority for one or more of these allowed purposes:

- A. To sell, transmit, and distribute potable water to members of the public and others; or
- B. To collect, remove, reduce, treat, purify, dispose and handle liquid and solid waste, sewage, and industrial waste, and refuse.

Section 1701.2 Definitions.

- A. "Applicant" means two or more persons or a qualified corporation seeking to form or convert to a water authority for one or more allowed purposes.
- B. "Application" means all documents submitted by the applicant to the Executive Director as required in Sections 1702.1 and 1703.1.
- C. "Certificate of Existence" means the document issued by the Executive Director which brings a water authority into existence.
- D. "Commission" means the Arkansas Natural Resources Commission.
- E. "Executive Director" means the Executive Director/Ex-Officio Secretary of the Commission.
- F. "Qualified corporation" means any nonprofit corporation originally formed pursuant to the Arkansas Nonprofit Corporation Act of 1993, codified at § 4-28-201 et seq., or a predecessor statute formed for one of more of the allowed purposes.
- G. "Service area" means a specific region for which applicant has received water plan compliance approval to provide water or sewer service pursuant to ANRC Title VI, Water Plan Compliance Review Procedures.
- H. "Users" means members of the public and commercial, industrial, and other users who receive services directly from a water authority.
- I. "Water authority" means a public body politic and governmental entity organized pursuant to Ark. Code Ann. § 4-35-101 et seq.
- J. "Water plan approval" or "Water plan compliance" or "water plan certification" means authorization from the Commission to construct, operate, manage, or maintain a water development project.

Section 1701.3 Hearing.

The Executive Director at his or her discretion may conduct a hearing with respect to any application for a Certificate of Existence under this title or for approval of an amendment to a water authority's articles or bylaws requested pursuant to this Title.

Section 1701.4 Approval of service area requires water plan certification.

A. The Executive Director's decision to issue a Certificate of Existence to an applicant approves formation or conversion to a water authority.

B. Any applicant proposing to provide water or sewer service must obtain approval of service area through the Commission's Water Plan Compliance Review Procedures, Title VI, and will need to apply to that program independently of the water authority application.

C. Any applicant who has already received water plan compliance approval to provide water or sewer service to a service area will retain such approval as a water authority.

D. The Executive Director must provide written approval for any amendment to an article or bylaw that would change a water authority's water or sewer service area. Before the Executive Director will provide written approval, the authority must first receive water plan compliance approval pursuant to ANRC Title VI, Water Plan Compliance Review Procedures.

Subtitle II. Formation of a water authority

Section 1702.1 Formation of water authority- application. Two or more persons, which may include cities, counties, public bodies, or non-profit corporations, may apply to form a water authority by presenting to and filing the following with the Executive Director:

A. Articles of formation and constitution which must include the following information:

1. The name of the water authority, which must be "The _____ Public Water Authority of the State of Arkansas," or similar name,
2. The location of the water authority's principal office,
3. The number of directors of the water authority, which must be at least five and subject to change and modification as provided in its bylaws,
4. The names and addresses of the proposed initial board of directors of the water authority,
5. The name and address of the water authority's agent for service of process,
6. A general description of the area to which the authority will provide service, and
7. A brief statement showing the necessity to form the proposed water authority and describing the benefits to be received by the residents and property owners who will receive service from the authority;

B. A copy of the applicant's proposed bylaws;

C. A statement and certification from the Secretary of State that the name of the proposed water authority is not identical with that of any other water authority, or so nearly similar thereto as to lead to confusion and uncertainty;

D. A filing and review fee of \$750, which the Commission will deposit in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514;

E. Any other information that the initial board of directors may deem necessary and appropriate; and

F. Any other information and documents which the Executive Director may designate and require.

Section 1702.2 Review procedure.

A. When the Executive Director receives an application, the Executive Director must review it to ascertain its completeness and accuracy.

B. The applicant must provide any additional items or information requested by the Executive Director.

Section 1702.3 Approval of formation.

A. Based upon the application and any information deemed pertinent by the Executive Director, the Executive Director will determine whether to issue a Certificate of Existence.

B. The Executive Director will approve or disapprove formation and will state reasons for disapproval in writing.

C. The water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title I, Rules of Organization and General Operation.

Subtitle III. Conversion of existing qualified corporations

Section 1703.1 Conversion to a water authority – application.

Whenever a qualified corporation desires to convert to and become reconstituted as a water authority, the qualified corporation must file with the Executive Director:

A. A resolution duly adopted by the applicant's board of directors evidencing the desire to convert to and become reconstituted as a water authority and certifying that the applicant:

1. Was initially formed as a non-profit corporation,
2. Cannot directly access the tax-exempt capital markets other than through a conduit issuer, and
3. Desires to realize interest rate savings as a result of its conversion and reconstitution as a water authority;

B. Articles of conversion and reconstitution which must be signed by a majority of the water authority's proposed initial board of directors and which must state the following information:

1. The name of the water authority, which must be "The _____ Public Water Authority of the State of Arkansas," or similar name,
2. The location of the water authority's principal office,
3. The number of directors of the water authority, which number must be at least five and subject to change and modification as provided in its bylaws,

4. The names and addresses of the proposed initial board of directors of the water authority,
 5. The name and address of the water authority's agent for service of process, and
 6. The qualified corporation's existing service area and a general description of any other areas to which the authority would like to provide service; and
- C. A copy of the water authority's proposed bylaws along with any other information which the proposed initial board of directors may deem necessary and appropriate;
- D. A statement and certification from the Secretary of State that the name of the proposed public water authority is not identical with that of any other water authority, or so nearly similar thereto as to lead to confusion and uncertainty;
- E. A filing and review fee of \$750, which the Commission must deposit in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514;
- F. Any other information that the proposed initial board of directors may deem necessary and appropriate; and
- G. Any other information and documents which the Executive Director may designate and require.

Section 1703.2 No members.

A. In addition to the requirements of Section 1703.1, if the qualified corporation seeking to become a water authority has members, the qualified corporation must also submit a resolution approved by the members that conforms to the requirements of Section 1703.1 A.

1. Membership approval of conversion must be obtained in the manner determined prior to conversion under the qualified corporation's articles, bylaws, or applicable statutes.

2. After conversion, the water authority will have no members.

B. Any entity that converted to a water authority according to the Commission's rules and existing law prior to Act 1330 of 2003 will be deemed to have complied with this title.

Section 1703.3 Review procedure.

A. When the Executive Director receives an application, the Executive Director will review it to ascertain its completeness and accuracy.

B. The applicant must provide any additional items or information requested by the Executive Director.

Section 1703.4 Approval of conversion.

A. Based upon the application and any information deemed pertinent by the Executive Director, the Executive Director will determine whether to issue a Certificate of Existence.

B. The Executive Director will approve or disapprove conversion and will state reasons for disapproval in writing.

C. The water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title I, Rules of Organization and General Operation.

Subtitle IV. Certificate of Existence

Section 1704.1 Issuance of Certificate of Existence.

A. If the application is found by the Executive Director to be complete and accurate, the Executive Director will issue a Certificate of Existence. The water authority referred to therein will come into existence as a public body politic and governmental entity of the state under the name set forth in the Certificate of Existence.

B. The water authority will then be vested with the rights and powers granted in Title Four, Chapter Thirty Five, Subchapter One of the Arkansas Code Annotated.

Section 1704.2 Filing with Secretary of State.

After issuance of the Certificate of Existence, the Commission will file the water authority's articles of constitution or articles of conversion and reconstitution in the office of the Secretary of State. In cases of conversion, filing with the Secretary of State will terminate and dissolve the previous corporate existence of the qualified corporation effective as of the date of the issuance of the Certificate of Existence.

Subtitle V. Amendment to articles or bylaws

Section 1705.1 Amendment to articles.

A. Any amendment to articles must be filed with the Executive Director along with the following information:

1. The name of the water authority,
2. The text of the amendment adopted,
3. The date of each amendment's adoption, and
4. A statement that the amendment was approved by a sufficient vote of the board of directors.

B. If the amendment concerns a change to the water authority's service area, the water authority must first apply for and obtain water plan approval pursuant to ANRC Title VI, Water Plan Compliance Review Procedures before the Executive Director will approve the amended article.

Section 1705.2 Amendments to bylaws.

A. A water authority is only required to obtain written approval for a proposed bylaw amendment from the Executive Director if the proposed amendment changes any of the following:

1. The number of directors,
2. The procedure for nominating or electing directors, or
3. The water authority's service area.

B. If the proposed amendment concerns a change to the water authority's service area, the water authority must first apply for and obtain water plan approval pursuant to ANRC Title VI, Water Plan Compliance Review Procedures, before the Executive Director will approve the amended bylaw.

C. The Executive Director will review the proposed amendment and will give the water authority written notice of the decision.

D. If the Executive Director disapproves the proposed amendment, the Executive Director will issue the reason or reasons for his decision in writing.

E. If the water authority submitted the proposed bylaw amendment to the Executive Director for review before following its own internal procedures for amending bylaws, the water authority will need to provide documentation to the Executive Director showing that the amended bylaw has been validly adopted before the authority will be deemed to have complied with Ark. Code Ann. § 4-35-208.

F. With the exception of a proposed amendment changing service area, the water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title I, Rules of Organization and General Operation.

Subtitle VI. Dissolution

Section 1706.1 Articles of dissolution.

Any water authority that intends to transfer, merge, consolidate, or otherwise dissolve its existence, must file articles of dissolution with the Executive Director.

Section 1706.2 Disposal of assets.

Upon dissolution, any assets of a water authority remaining after payment of claims and liabilities of the water authority must be transferred to the successor water authority, if applicable, or to the Commission.