

SHORT TITLE: Waters and water rights; control of rural water districts or not-for-profit corporations; codification; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 834

By: Easley

AS INTRODUCED

An Act relating to waters and water rights; defining terms; prohibiting acquisition of rural water district or not-for-profit corporation under certain circumstances; requiring statement containing certain information to be filed with Oklahoma Water Resources Board; authorizing Board to approve certain acquisition except in certain circumstances; providing for public hearing; providing for notice of public hearing; stating certain exception for acquisition by domestic water public utilities; vesting state courts with jurisdiction over certain actions; requiring Board to serve certain copies by certified mail; giving certain powers to Board; providing for acquiring parties to pay expense of certain investigations within certain time period; authorizing certain entities to enter into certain legal actions to enforce compliance; authorizing parties to transmit evidence of violations to certain district attorney; stating penalties for violating act; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.41 of Title 82, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Acquiring party" means a person and all affiliates thereof by whom or on whose behalf an acquisition of control referred to in Section 2 of this act is to be effected;

2. "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified, including any corporation created at the direction of the person specified, for purposes of corporate reorganization;

3. "Assets" in the case of a district or corporation means the physical plant, equipment, accounts receivable, accounts payable and all other assets of such district or corporation;

4. "Board" means the Oklahoma Water Resources Board;

5. "Control", including the terms "controlling" or "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership, by contract, purchase of assets, or otherwise, unless such power is the result of an official position with, or corporate office held in, such person. Control shall be presumed to exist if any person, directly or indirectly, owns or controls the assets of such district or corporation. This presumption may be rebutted by showing that control does not exist in fact. The Board may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such

determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

6. "Corporation" means a not-for-profit corporation organized:

- a. pursuant to the provisions of the Oklahoma General Corporation Act, Section 1001 et seq. of Title 18 of the Oklahoma Statutes, for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such and having no capital stock, and
- b. for the purpose of developing and providing rural water supplies to serve rural residents;

7. "District" means a public nonprofit water district created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act, Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes; and

8. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.42 of Title 82, unless there is created a duplication in numbering, reads as follows:

No person shall make an offer for, or enter into any agreement to exchange, seek to acquire, or acquire, the assets of a district or corporation if, after the consummation of such action, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such district or corporation, and no person shall merge with or otherwise acquire control of a district or corporation, unless, at the time any such offer, request or invitation is made or prior to the acquisition of

assets, such person has sent to the Oklahoma Water Resources Board a statement containing the information required by Section 3 of this act and such offer, request, invitation, or acquisition has been approved by the Board in the manner prescribed by Section 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.43 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The statement to be filed with the Oklahoma Water Resources Board as required by Section 2 of this act shall be made under oath or affirmation and shall contain the following information:

1. The name and address of each acquiring party and all affiliates thereof:

- a. if such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or
- b. if such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, an informative description of the business intended to be done by such acquiring party and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party or who perform or will perform functions appropriate or similar to such position. Such list shall include for each such individual the information required by subparagraph a of this paragraph;

2. The source, nature and amount of the consideration used or to be used in effecting the acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

3. Audited financial information in a form acceptable to the Board as to the financial condition of an acquiring party for the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the statement;

4. Any plans or proposals which an acquiring party may have to liquidate such district or corporation, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the district or corporation are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the district or corporation;

5. Copies of all offers for, exchange offers for, and agreements to acquire or exchange, any assets and, if distributed, additional soliciting material relating thereto;

6. Documentation from any and all mortgagors which hold a mortgage on any plant or equipment of such district or corporation setting forth such mortgagors' approval of such proposed acquisition of control; and

7. Such additional information as the Board may by rule prescribe as necessary or appropriate for the protection of ratepayers of the district or corporation or in the public interest.

B. If a person required to file the statement referred to in Section 2 of this act is a partnership, limited partnership, syndicate or other group, the Board may require that the information called for in paragraphs 1 through 7 of subsection A of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the statement referred to in Section 2 of this act is a corporation, the Board may require that the information called for by paragraphs 1 through 7 of subsection A of this section be given, with respect to such corporation, to each officer and director of such corporation.

C. If any material change occurs in the facts set forth in the statement filed with the Board and sent to such district or corporation pursuant to this act, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Board and sent by the person filing the statement to the district or corporation within two (2) business days after such person learns of such change.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.44 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Water Resources Board shall approve any acquisition of control referred to in Section 2 of this act unless, after a public hearing thereon, it finds that one or more of the following conditions will exist if such acquisition of control is consummated, in which event it shall disapprove such acquisition of control and the same shall not be consummated:

1. The acquisition of control would adversely affect the contractual obligations of the district or corporation or its ability or commitment to render the same level of service to its customers that the district or corporation is currently rendering;

2. The effect of the acquisition of control would be substantially to lessen competition in the furnishing of public utility service in this state;

3. The financial condition of any acquiring party is such as might jeopardize the financial stability of the district or corporation or otherwise prejudice the interest of the district or corporation customer;

4. The plans or proposals which an acquiring party has to liquidate the district or corporation, sell its assets, or a substantial part thereof, or consolidate or merge it with any person, or to make any other material change in its investment policy, business or corporate structure or management, would be detrimental to the customers of the district or corporation and not in the public interest; or

5. The competence, experience and integrity of the persons who would control the operation of the district or corporation are such that it would not be in the interest of its customers and the public to permit the acquisition of control.

B. The public hearing referred to in subsection A of this section shall be commenced within thirty (30) days after the statement required by Section 2 of this act is filed. The place, date and time for such public hearing shall be set by the Board and

notice thereof shall be given by the Board to the person filing the statement and to the district or corporation at least twenty (20) days prior to the date of the public hearing. Notice of the public hearing shall be given by the person filing the statement to such other persons and in such manner as may be directed by the Board at least fifteen (15) days prior to such public hearing. The district or corporation shall give notice to its customers as provided in Section 5 of this act. The public hearing referred to in subsection A of this section shall be concluded within thirty (30) days after the commencement of such hearing. The Board shall make a determination of the factors specified in subsection A of this section within thirty (30) days after the conclusion of such hearing, and any acquisition of control within the purview of this section shall be deemed approved unless the Board has, within thirty (30) days after the conclusion of such hearing, entered its order disapproving the acquisition of control.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.45 of Title 82, unless there is created a duplication in numbering, reads as follows:

Notice, in a form to be specified by the Oklahoma Water Resources Board, of the public hearing to be held pursuant to Section 4 of this act shall be mailed, or shall be given in such other manner as may be determined by the Board, by the district or corporation to its customers within ten (10) business days after it has received notice of the hearing from the Board. The expenses of preparation and mailing and giving of such notice shall be borne by the person filing the statement required by Section 2 of this act. As security for the payment of such expenses, the Board may require such person to file with the Board an acceptable bond or other deposit in an amount to be determined by the Board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.46 of Title 82, unless there is created a duplication in numbering, reads as follows:

If the acquiring party is a domestic water public utility, and the district or corporation, control of which is sought to be acquired in a transaction described in Section 2 of this act which would require the filing of a statement pursuant to Section 2 of this act, is subject to the jurisdiction of the Oklahoma Water Resources Board, an application for approval containing such information as the Board may prescribe by rule promulgated pursuant to this act shall be filed with and heard by the Board after such notice as the Board may prescribe, and the transaction shall be approved or disapproved based upon the factors enumerated in paragraphs 1 through 5 of subsection A of Section 4 of this act, subject to judicial review as provided in Section 9 of this act, but the other provisions of this act shall not apply to such transaction. This act shall not apply to consolidations of districts or corporations governed by Section 1324.25 of Title 82 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.47 of Title 82, unless there is created a duplication in numbering, reads as follows:

The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files or is required to file a statement with the Oklahoma Water Resources Board as required by Section 2 of this act, and over all actions involving such person arising out of violations of this act. Copies of all such lawful process shall be served on the Board and transmitted by certified or registered mail, with return receipt requested, by the Board to such person at his last-known address.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.48 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board shall have power to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders and rules as it may find necessary or appropriate to carry out the provisions of this act. The expense of conducting an analysis or investigation by the Board of the information required to be filed under Section 3 of this act shall be paid by the acquiring party within fifteen (15) days of the public hearing required by Section 4 of this act. Expenses of conducting the analysis or investigation may include, but not be limited to, the cost of acquiring expert witnesses, consultants and analytical services.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.49 of Title 82, unless there is created a duplication in numbering, reads as follows:

Whenever it shall appear to the Oklahoma Water Resources Board, the Attorney General or a district or corporation which reasonably believes itself to be the object of an offer or attempt to obtain control as described in Section 2 of this act, that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, or of any rule, or order thereunder, the Board, the Attorney General or the district or corporation may bring an action in the district court in and for Oklahoma County, State of Oklahoma, to enjoin such acts or practices and to enforce compliance with this act or any rule, order or temporary or permanent injunction shall be granted without bond. The Board, the Attorney General and the district or corporation shall transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of this act to the district attorney for Oklahoma County, who, in

his or her discretion, may institute appropriate criminal proceedings.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.50 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Any person who willfully and knowingly does or causes to be done any act, matter or thing prohibited or declared to be unlawful by this act, or who willfully and knowingly omits or fails to do any act, matter or thing required by this act to be done, or willfully and knowingly causes such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than two (2) years, or both such fine and imprisonment. In addition, such violation shall be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars (\$500.00) for each day during which such offense occurs.

B. Any person who willfully and knowingly violated any rule, restriction, condition or order made or imposed by the Board under authority of this act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars (\$500.00) for each day during which such offense occurs.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-1823

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