

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1313

By: Easley

AS INTRODUCED

An Act relating to cities and towns; creating the Oklahoma Municipal Water Authority Act; providing short title; declaring public interest; stating legislative findings; stating intent; creating Oklahoma Municipal Water Authority; providing for construction; creating election committee; stating membership; providing for meetings; providing for voting; authorizing bylaws; providing for board of directors; providing for additional members of election committee; defining terms; authorizing joint ownership in water supply and distribution projects; stating public purpose; stating powers, rights and privileges of Authority; authorizing the Authority to issue bonds for certain purposes subject to certain bond oversight; providing for codification; and providing an effective date.

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 25-101 of Title 11, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Municipal Water Authority Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-102 of Title 11, unless there is created a duplication in numbering, reads as follows:

It is declared that the provision of adequate, reliable and economic supplies of water is in the public interest; that there is a need to establish a means by which municipalities and public trusts owning and operating municipal water supplies, water distribution systems and wastewater treatment facilities may jointly plan, finance, own and operate facilities relating to water supplies and wastewater treatment and acquire surface and underground water rights

and other infrastructure necessary for the acquisition and distribution of water supplies and the treatment of wastewater through the creation of a water authority in order to achieve economies and efficiencies not possible for municipalities and public trusts acting alone; that the joint planning, financing, ownership and operation of facilities relating to water supplies, water distribution, and wastewater treatment, the acquisition of surface and underground water rights and other infrastructure necessary for the acquisition and distribution of water supplies and the issuance of revenue bonds as provided herein is for a public use and serves a valid public purpose; and that the Legislature finds it necessary and proper to provide a method for municipalities and public trusts operating municipal water systems to jointly plan, finance, develop, own or operate, either by themselves or with other public agencies, utilities or persons, facilities appropriate to the present and projected needs of such municipalities and public trusts for water supplies and distribution. It is further declared that the intent of this act is to consider all methods for the acquisition and distribution of water supplies and to provide such water in the most economical manner available.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-103 of Title 11, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the state a water authority to be known as the "Oklahoma Municipal Water Authority". The Authority shall be, and is hereby declared to be a state governmental agency, body politic and corporate, with powers of government and with authority to exercise the rights, privileges and functions hereinafter specified.

Nothing in this act or in any other act or law contained, however, shall be construed as authorizing the Authority to levy or collect taxes or assessments, or to create any indebtedness payable

out of the taxes or assessments, or in any manner to pledge the credit of the State of Oklahoma, or any subdivision thereof.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-104 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. 1. Election Committee. The Authority shall be governed by a board of directors consisting of seven members or such greater number, but in no event more than eleven members, as provided in the bylaws of the Authority as in effect from time to time. Members of the board of directors of the Authority shall be eligible to succeed themselves and shall be elected by the election committee as hereinafter provided in this section. No later than ninety (90) days following the effective date of this act, each of those eligible public agencies which shall have, prior to such date, by proper resolution of its governing body or its public trust, declared its intention to participate, or to have any public trust operating its water supply and distribution system participate, with the Authority in the development of water supply resources, shall designate one person as its representative on the election committee. All such resolutions of declaration of intention to participate with the Authority shall be filed with the Secretary of State and shall be presented to the election committee at its first meeting which shall be held in the office of the Oklahoma Municipal League at 11:00 a.m. on the first Tuesday following such date. At such meeting the election committee shall organize and elect a chair and such other officers as may be desirable in the determination of the election committee. The election committee shall then determine the sufficiency of the resolutions presented to it.

2. Election Committee Voting. For purposes of voting upon any matter which may properly come before the election committee, each representative shall have one vote unless otherwise provided in the bylaws of the Authority as in effect from time to time. The presence

at any meeting of the election committee of representatives entitled to cast a majority of the total votes to which the election committee shall be entitled shall, unless otherwise provided in the bylaws of the Authority as in effect from time to time, constitute a quorum of the election committee.

3. Bylaws of the Authority.

- a. The bylaws of the Authority shall be adopted by the election committee of the Authority by a majority vote of the election committee and may thereafter be amended at any time and from time to time in whole or in part by the election committee or by the board of directors by a majority of the total votes entitled to be cast at any properly called and constituted meeting thereof; provided, however, that any such amendment shall not violate the provisions of this act.
- b. The bylaws of the Authority shall provide the following:
 - (1) the time, place, manner of calling, notice, quorum and voting provisions, and other procedural rules for regular and special meetings of the election committee of the Authority,
 - (2) the time, place, manner of calling, notice, quorum and voting provisions, and other procedural rules for regular and special meetings of the board of directors of the Authority,
 - (3) provisions for the number, election, term of office and removal of members of the board of directors and for filling vacancies on the board of directors,
 - (4) the titles, duties and manner of election, removal and replacement of officers of the Authority,

- (5) provisions governing when the Authority may dissolve and the disposition of property of the Authority and the procedures to be followed in the event of such a dissolution; provided, however, that any such dissolution shall not violate the provisions of this act, and
- (6) such other rules for regulating the affairs of the Authority as the election committee or the board of directors may deem necessary or advisable.

4. Board of Directors. The initial members of the board of directors of the Authority shall be elected by the election committee of the Authority. Members of the board of directors of the Authority shall be residents of the State of Oklahoma. Members of the board of directors of the Authority may, but need not, be members of the election committee. Each member of the board of directors of the Authority shall hold office until the adjournment of the annual meeting of the board of directors held at, or nearest to, the expiration of their term of office as provided in the bylaws of the Authority and until their successor is elected.

B. Additional Members of Election Committee. Each eligible public agency declaring its intention, by proper resolution of its governing body, to participate, or to have any public trust operating its water supply and distribution system participate, with the Authority in the development of water supply resources no later than ninety (90) days following the effective date of this act shall promptly file such resolution with the Secretary of State and give written notice to the Authority of the adoption of such resolution and shall then designate one person as an additional member of the election committee whose term shall begin with the first meeting of the election committee which is held following the expiration of ten (10) days from the date of receipt of notice of the adoption of such resolution by the Authority. Members of the election committee shall

serve at the pleasure of the governing body of the eligible public agency by which the members were appointed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-105 of Title 11, unless there is created a duplication in numbering, reads as follows:

As used in this act the following words shall have the following meanings unless the context clearly indicates otherwise:

1. "Authority" means the Oklahoma Municipal Water Authority hereby created and any successor or successors thereto. Any change in name or composition of the Authority shall in no way affect the vested rights of any person under the provisions of this act or impair the obligations of any contracts existing under this act;

2. "Board of directors" means the board of directors elected by the election committee as set forth in Section 4 of this act which shall exercise all the powers and manage and control all the affairs and property of the Authority unless otherwise specifically provided herein or in the bylaws of the Authority as in effect from time to time;

3. "Bonds" means any revenue bonds, notes or other evidences of obligations of the Authority issued by the Authority under the provisions of this act, including, without limitation, bond anticipation notes and refunding bonds;

4. "Eligible public agency" means any municipality, or municipal public trust which owns, maintains or operates a water supply and/or water distribution systems system within the State of Oklahoma on the date on which this act becomes law;

5. "Person" means:

- a. any natural person,
- b. any eligible public agency as defined herein,
- c. any public trust as defined herein,
- d. the United States, any state, any municipality, political subdivision, municipal corporation, unit of

local government, governmental unit or public corporation created by or pursuant to the laws of the United States or any state, or any board, corporation or other entity or body declared by the laws of the United States or any state to be a department, agency or instrumentality thereof,

- e. any corporation, not-for-profit corporation, firm, partnership, cooperative association, rural water district or business trust of any nature whatsoever organized and existing under the laws of the United States or any state, or
- f. any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not-for-profit corporation, firm, partnership, cooperative association, rural water district or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental entity thereof;

6. "Project" means any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the State of Oklahoma, used or useful in the acquisition of surface or underground water rights, or the purchase, sale, or exchange of water supplies and in the distribution, transportation or storage of water for any such purposes or any interest in, or right to the use, services, output or capacity, of any such plant, works, system or facility; and

7. "Public trust" means any public trust created and existing under the provisions of the Trusts for Furtherance of Public Functions Law and the Oklahoma Trust Act which has as its beneficiary a municipality and which owns, maintains or operates a water supply

and distribution system serving the residents and consumers of such municipality and existing on the date on which this act becomes law or created hereafter with an eligible public agency as the beneficiary.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-106 of Title 11, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Municipal Water Authority is hereby authorized to own a joint interest in any water supply and distribution project.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-107 of Title 11, unless there is created a duplication in numbering, reads as follows:

It is hereby found, determined, and declared that the creation of the Authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and that the Authority is an institution of purely public charity performing an essential governmental function and all property of the Authority, including the Authority's interest in any property held jointly with any other person, is hereby declared and shall in all respects be considered to be public property and title to such property shall be held by the Authority only for the benefit of the public and the use of such property pursuant to the terms of this act shall be and is hereby declared to be for essential public and governmental purposes, that is, for the promotion of public general welfare in the matter of providing an adequate, dependable and economic water supply in an effort to better the general condition of the residents of the state and all of the property of and income, obligations and interest on all the bonds and notes of the Authority and the transfer thereof shall be and hereby are declared to be nontaxable for any and all purposes by the state or any of its political subdivisions.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-108 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The Authority shall have and is hereby authorized to exercise all powers, rights and privileges enumerated in this section. Such powers, rights and privileges shall be exercised by its board of directors unless otherwise specifically provided herein or by the bylaws of the Authority as in effect from time to time.

B. The Authority may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate, individually or jointly with other persons, in one or more projects, proposed, existing or under construction, and may act as agent, or designate one or more persons, whether or not participating in a project, to act as its agent, in connection with the planning, financing, acquisition, construction, reconstruction, ownership, lease, operation, maintenance, repair, extension or improvement of the project.

C. The Authority may investigate the desirability of and necessity for obtaining additional sources and supplies of surface and ground water and infrastructure of any kind for such purpose, and make studies, surveys and estimates as may be necessary to determine the feasibility and cost thereof.

D. The Authority may cooperate with other persons in the development of sources and supplies of surface and ground water and other infrastructure of any kind for such purposes, and give assistance with personnel and equipment in any project.

E. The Authority may apply to any person for consents, authorizations or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.

F. The Authority may perform any act authorized by this act through, or by means of, its officers, agents or employees or by

contract with any person, including, without limitation, the employment of engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the board of directors, and fix and pay their compensation from funds available to the Authority therefor.

G. The Authority may acquire, hold, use and dispose of income, revenues, funds and money.

H. The Authority may, individually or jointly with other persons, acquire, own, hire, use, operate and dispose of personal property and any interest therein.

I. The Authority may, individually or jointly with other persons, acquire, own, use, lease as lessor or lessee, operate and dispose of real property and interests in real property, including projects existing, proposed or under construction, and make improvements thereon.

J. The Authority may grant the use by franchise, lease or otherwise and make charges for the use of any property or facility owned or controlled by it.

K. The Authority may borrow money and issue negotiable bonds, secured or unsecured, as provided by state law.

L. The Authority may invest money of the Authority not required for immediate use, including proceeds from the sale of any bonds.

M. The Authority may exercise the power of eminent domain.

N. The Authority may determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate or control.

O. The Authority may contract with any person for the planning, development, construction, operation, sale or lease as lessor or lessee of any project or for any interest therein, on such terms and for such period of time as its board of directors shall determine.

P. The Authority may contract with any eligible public agency, any public trust, or any other person for the sale and distribution of waters, acquisition of water supplies or other services within or without the state on such terms and conditions as the board of directors shall approve. Any such contract may be for the sale of water and services of a particular project or may be for water supply and distribution generally without regard to a specific project and may be for the supply of a specific quantity of water or may be based on the requirements of the purchaser or may be on such other terms and conditions as the board of directors deems appropriate.

Q. The Authority may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this act, including, without limitation, contracts or agreements for the purchase, sale, exchange, distribution or storage of surface and ground water and other supplies or infrastructure of any kind for any such purposes, within and without the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, on such terms and for such period of time as the board of directors determines.

R. In any case in which the Authority participates in a project as a joint owner with one or more persons, the Authority may enter into an agreement or agreements with respect to such project with the other person or persons participating therein, and any such agreement may contain such terms, conditions and provisions consistent with the provisions of the act as the parties thereto shall deem to be in the parties' best interest. Any such agreement may include, but need not be limited to, provisions defining what constitutes a default thereunder and providing for the rights and remedies of the parties thereto upon the occurrence of such a default deemed appropriate by the board of directors including, to the extent deemed appropriate,

the acquisition by nondefaulting parties of all or any part of the defaulting parties' interest; provisions setting forth such restraints on alienation of the interests of the parties in the project as the board of directors deems appropriate; provisions for the construction, operation and maintenance of such water treatment and distribution facility by any one or more of the parties to such agreement which party or parties shall be designated in or pursuant to such agreement as agent or parties thereto or by such other means as may be determined by the parties thereto; and provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project. In exercising its power to participate in a project as a joint owner with one or more persons, the Authority may not loan its credit to any person which is a joint owner of such project; provided, however, the appropriate allocations of the costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project between the Authority and such persons shall not be a loan of credit by the Authority to such persons. In carrying out its functions and activities as such agent with respect to construction, operation and maintenance of a project, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the Authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to the person acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be made binding upon the Authority without further action or approval by the Authority.

S. The Authority may procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable, or may self-insure against such losses.

T. The Authority may contract for and accept any gifts, grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to the provisions of this act, with the terms and conditions thereof.

U. The Authority may adopt a corporate seal and may sue or be sued.

V. The Authority may exercise all other powers not inconsistent with the Constitution of the State of Oklahoma or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to effectuate its authorized purposes or to the exercise of any of the powers enumerated in this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 25-109 of Title 11, unless there is created a duplication in numbering, reads as follows:

Purposes. The Authority may issue bonds in such principal amounts as the Authority deems necessary to provide sufficient funds to perform any of its corporate purposes and powers including, without limitation, the acquisition, construction or termination of any project to be owned or leased, as lessor or lessee, by the Authority or the acquisition of any interest therein or any right to the products or services thereof, the funding or refunding of the principal of, redemption premium, if any, and interest on, any bonds issued the Authority whether the bonds or interest to be funded or refunded have or have not become due, the payment of engineering, legal and other expenses, together with interest subsequent to the estimated date of completion of the project for such period of time as the board of directors determines appropriate, the establishment or increase of reserves to secure or to pay the bonds or interest

thereon, the providing of working capital and the payment of, and the establishment or increase of reserves for, all other costs or expenses of the Authority incident to and necessary or convenient to perform, its corporate purposes and powers. The Authority shall be subject the Oklahoma Bond Oversight and Reform Act.

SECTION 10. This act shall become effective November 1, 2002.

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