

Stricken language would be deleted from and underlined language would be added to present law.
Act 769 of the Regular Session

State of Arkansas As Engrossed: S3/29/23 S3/30/23 S4/3/23
94th General Assembly **A Bill**
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SENATE BILL 414

By: Senators J. Petty, J. English, Gilmore, K. Hammer, G. Leding, D. Wallace
By: Representatives McAlindon, Beaty Jr., Clowney, D. Garner, Hawk, L. Johnson, Lundstrum,
Pilkington, Puryear, D. Whitaker

For An Act To Be Entitled

AN ACT TO AMEND THE REGIONAL AIRPORT ACT; TO CREATE A
PROCEDURE FOR ANNEXATION AND DETACHMENT; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE REGIONAL AIRPORT ACT; AND TO
CREATE A PROCEDURE FOR ANNEXATION AND
DETACHMENT.

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

SECTION 1. Arkansas Code § 14-362-103(a)(2), concerning the
establishment of an airport authority, is amended to read as follows:

(2)(A) ~~No~~ A county or municipality shall not participate in ~~such~~
the creation and establishment of an authority ~~unless and~~ until:

(i) its ~~The~~ governing body ~~se~~ of the county or
municipality provides for the creation and establishment by ordinance; and

(ii) The county or municipality enters into an
agreement with the other participating governmental units ~~establishing that~~
establishes the terms and conditions for the operation of the authority.

(B) The terms and conditions established under subdivision
(a)(2)(A)(ii) of this section shall be within the limitations provided in
this chapter and ~~such~~ other laws of the State of Arkansas as may be
applicable.



SECTION 2. Arkansas Code § 14-362-104(b), concerning the creation of an authority as a public corporation, is amended to read as follows:

(b) The exercise of the powers and performance of duties provided for in this chapter by each authority and its officers, agents, and employees are:

(1) declared to be public Public and governmental functions;
and

(2) exercised Exercised for a public purpose and matters of public necessity, conferring upon each authority governmental immunity from suit in tort.

SECTION 3. Arkansas Code § 14-362-104, concerning the creation of an authority as a public corporation, is amended to add an additional subsection to read as follows:

(c)(1) It is the public policy of the State of Arkansas that an authority created under this chapter and the directors and employees of the authority are immune from liability and from suit for damages except to the extent that the damages may be covered by liability insurance.

(2) An authority created under this chapter is immune from a tort action resulting from an act or omission of its directors, employees, or agents.

SECTION 4. Arkansas Code § 14-362-105 is amended to read as follows:
14-362-105. Appointment of board.

(a) ~~Subject to such limitations as may be contained in the agreement provided for in § 14-362-103, the~~ The management and control of each authority and its property, operations, business, and affairs shall be lodged in a board of directors of not less than six (6) nor more than twenty-four (24) persons who shall be appointed for terms of six (6) years each as ~~hereinafter~~ provided in this section.

(b)(1) The number of members of the board that each of the participating governmental units is entitled to appoint to the board shall be ~~set forth provided~~ provided in the agreement ~~provided for in~~ under § 14-362-103.

(2) However, each of the participating governmental units shall be entitled to appoint at least one (1) member to the board and, if the state is a participant in the authority, the state shall be entitled to appoint a

majority of the members of the board.

(3) Appointments A member of the board shall be ~~made~~ appointed by the mayor of each participating municipality, the county judge of each participating county, and the Governor.

(c)(1) The members of the board of an authority shall have staggered terms, ~~as provided in the agreement establishing the authority,~~ as follows:

(A) One-third (1/3) of the members for six-year terms;

(B) ~~one-third~~ One-third (1/3) of the members for four-year terms; and

(C) ~~one-third~~ One-third (1/3) of the members for two-year terms.

(2) Thereafter, all appointments shall be for six-year terms.

(d)(1) All members of the board appointed by the participating municipalities and counties shall be bona fide residents and qualified electors of the county or municipality which the members represent.

(2) All members of the board appointed by the state shall be bona fide residents of the state.

(e)(1) Except as provided under subdivision (e)(2) of this section, a member of the board shall not:

(A) Participate in, vote on, influence, or attempt to influence an official decision of the board of directors if he or she has a pecuniary interest in the matter under consideration by the board of directors; or

(B) Be a part of any discussion or vote on any matter that may exclusively benefit the member of the board.

(2) A member of the board may participate in, vote on, influence, or attempt to influence an official decision of the board of directors if the only pecuniary interest that he or she accrues is:

(A) Incidental to his or her position as a member of the board; or

(B) As a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(3) The provisions in this subsection supersedes any conflicts in any provisions contained in an existing regional airport agreement.

SECTION 5. Arkansas Code § 14-362-109(12), concerning the powers of an authority is, repealed.

~~(12)(A) To constitute the authority or a committee of the authority as improvement district commissioners and to create and operate an improvement district composed of the area encompassed within the jurisdictions of the participating governing bodies upon the petition of persons claiming to be two thirds (2/3) in value of the owners of real property in the area, as shown by the last county assessment.~~

~~(B) The improvement district shall be for the purpose of financing the construction, reconstruction, or repair of the regional airport and its facilities.~~

~~(C) The creation and operation of an improvement district shall be, to the extent consistent with this chapter, in accordance with the procedures established by the laws of this state for the creation and operation of municipal improvement districts;~~

SECTION 6. Arkansas Code § 14-362-132(b) and (c), concerning an authority's exemption from annexation and municipal regulation, are amended to read as follows:

(b)(1) The property and operations of an authority shall be exempt from the enactment of any rules, regulations, ordinances, permit requirements, and enforcement by a municipality.

(2) A municipality may enact and collect a sales tax, a liquor tax, and a hotel, motel, and restaurant tax on the operations located on the property of the authority that is located within the municipality, but other taxes or fees enacted by a municipality pertaining to the property or operations of the authority shall require the approval of a majority vote of the board of directors of the authority.

~~(c) If a municipality in which the property of an authority is located merges with or is annexed or consolidated by another municipality, an An authority may ~~de-annex~~ detach from ~~the~~ a municipality upon a majority vote of the board of directors of the authority compliance with the detachment requirements under § 14-362-301 et seq.~~

SECTION 7. Arkansas Code Title 14, Chapter 362, is amended to add an

additional *subchapter* to read as follows:

Subchapter 3 – Annexation and Detachment

14-362-301. Legislative findings.

(a) The General Assembly finds that:

(1) The public and governmental functions of an authority required under this chapter are best achieved by giving the authority the discretion to determine whether it is in the best interest of the authority to achieve its mission in conjunction with or separate from a municipality;

(2) The requirements of this subchapter are:

(A) Supplemental to constitutional or statutory provisions now existing or later adopted which may provide for an authority's annexation or detachment from a municipality; and

(B) Intended to:

(i) Provide for the orderly detachment of an authority from one (1) or more municipalities in a manner that protects the interests of the authority and the municipality; and

(ii) Ensure to the extent a municipality may have issued bonds or other evidences of indebtedness secured by or payable from a tax or other revenue relating to the operations of the authority, that the bonds or other evidences of indebtedness are protected so that the contract for repayment between a municipality and any third party is not impaired.

14-362-302. Involuntary annexation prohibited.

Property owned by an authority that is not within the corporate limits of a municipality shall not be annexed by a municipality without a two-thirds (2/3) vote of approval by the members of the board of directors of the authority.

14-362-303. Coordination with Arkansas Geographic Information Systems Office to annex or detach.

Before an authority begins an annexation or detachment proceeding under this subchapter, the authority shall coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the annexation or detachment areas.

14-362-304. Petition for Annexation – Definition.

(a) As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town.

(b) Except as provided in subsection (c) of this section, an authority may petition a municipality for voluntary annexation in the same manner provided in § 14-40-609.

(c)(1) The creation of an enclave owned by an authority is not prohibited under this section.

(2) An authority petitioning a municipality to annex land containing an enclave under subdivision (c)(1) of this section shall include the following in the petition:

(i) The reason the authority's continued ownership of the enclave is necessary; and

(ii) The authority's intended use of the enclave.

14-362-305. Petition for detachment.

(a) An authority may petition for detachment under this section upon the passing of a resolution by the board of directors of the authority:

(1) Recommending the detachment of property owned by the authority from one (1) or more municipalities in which the authority's property is located; and

(2) Approved by a vote of at least two-thirds (2/3) of the members of the board.

(b)(1) An authority shall file a petition for detachment in the county in which the property the authority is petitioning for detachment is located with the:

(A) County court;

(B) County assessor; and

(C) County clerk.

(2) A petition filed under subdivision (b)(1) of this section shall:

(A) Be in writing;

(B) Name the persons authorized to act on behalf of the authority;

(C) Contain an attestation signed before a notary or notaries by a person authorized to sign for the authority as the owner of the property or an agent of the authority confirming the desire to be detached;

(D) Contain an accurate description of the relevant property;

(E) Contain a letter or title opinion from a certified abstractor or title company verifying that the authority is the owner of record of the relevant property;

(F) Contain a letter or verification from a certified surveyor or engineer verifying that an enclave that is not owned by the authority will not be created;

(G) Include a schedule of services that are currently provided by the municipality to the property being detached; and

(H) Identify any special considerations or factors that the authority and municipality should agree to before the detachment is finalized, including without limitation:

(i) The negotiation of outstanding debt obligations;
and

(ii) A determination of all financial matters pertaining to the schedule of services provided by the municipality under subdivision (b)(2)(G) of this section.

(c)(1) Within fifteen (15) days from the date the petition is filed under subdivision (b)(1) of this section, the county assessor and the county clerk shall:

(A) Determine whether the petition meets the requirements of subdivision (b)(2) of this section; and

(B) Report the determination required under subdivision (b)(2) of this section to the county court.

(2)(A) If it is determined that the petition does not meet the requirements of subdivision (b)(2) of this section, the county court shall enter a court order identifying the deficiencies in the petition within five (5) business days from the date the determination was reported to the county court under subdivision (c)(1)(B) of this section.

(B)(i) An authority may file an amended petition at any time after the county court enters the court order required under subdivision (c)(2)(A) of this section.

(ii) The amended petition is required to meet the requirements of subdivision (b)(2) of this section.

(3) If a county assessor and a county clerk report that the petition meets the requirements of subdivision (b)(2) of this section, the county court has fifteen (15) business days from the date the determination was reported to:

(A) Review the petition and records for completeness and accuracy;

(B) Determine that the detachment does not create an enclave that is not owned by the authority;

(C) Confirm the petition contains the schedule of services required by subdivision (b)(2)(G) of this section;

(D) At the discretion of the county judge, determine whether the county will be responsible for the maintenance of dedicated public roads and rights-of-way abutting or traversing the property that is being detached; and

(E) Issue an order stating the findings required under this subdivision (c)(3) and provide the:

(i) Order to the authority; and

(ii) Petition and order to the municipality to which the authority is petitioning for detachment.

(d)(1) An order issued under subdivision (c)(3)(E) of this section shall require the municipality being petitioned for detachment to file a response with the county court:

(A) Within fifteen (15) business days from the date the court order was received; and

(B) That states whether the municipality agrees or does not agree with the special considerations or factors to be addressed before the detachment is finalized under subdivision (b)(2)(H) of this section.

(2) A municipality that does not agree with the special considerations or factors stated in the petition under subdivision (b)(2)(H) of this section shall file a response with the county court that:

(A) States the reason the municipality disagrees with the special consideration or factors stated in the petition under subdivision (b)(2)(H) of this section; and

(B) Includes any additional special considerations or

factors the municipality may have.

(e)(1) An authority has five (5) business days from the date the municipality files the response required under subdivision (d)(2) of this section to respond to the municipality's additional special considerations or factors under subdivision (d)(2)(B) of this section.

(2)(A) If the authority does not agree with the additional special considerations or factors, the county court clerk shall set a hearing date to determine the special considerations or factors to be addressed before detachment.

(B) The hearing under subdivision (e)(2)(A) of this section shall be set on a date of earliest convenience for both parties but no later than sixty (60) calendar days after the filing of the authority's response under subdivision (e)(1) of this section.

(3)(A) If a municipality agrees with the special considerations or factors in the petition required under subdivision (b)(2)(H) of this section, then the county court shall enter an order providing a timeline for the authority and the municipality to negotiate in good faith and to reach an agreement with respect to the special considerations or factors required before detachment is finalized.

(B) Unless a different period of time is mutually agreed to by the municipality and the authority, the county court shall require the municipality and the authority to report their agreement to the county court not later than ninety (90) calendar days from the date the order was filed.

(C)(i) If an authority and a municipality cannot reach an agreement by the deadline provided under this subdivision (e)(3), the county court shall order the municipality and authority to participate in mediation.

(ii) The mediation shall take place not later than sixty (60) calendar days from the date of the order requiring mediation.

(iii)(a) The mediator shall file a mediation report with the county court no later than thirty (30) calendar days after the date of the mediation required under subdivision (e)(3)(C)(i) of this section.

(b) The mediator's report shall:

(1) Contain the agreed upon terms relating to the special considerations and factors, but only if the mediation is successful; or

(2) If the mediation is unsuccessful,

state that the parties were unable to come to an agreement relating to the special considerations and factors.

(iv)(a) The county court shall enter an order confirming the detachment, and no later than thirty (30) calendar days from the date the mediation report is filed, the county clerk shall forward a copy of the order to the county assessor and to the Secretary of State.

(b) The order shall contain:

(1) The final terms relating to the special considerations and factors, but only if the mediation is successful; or

(2) If the mediation is unsuccessful, the order shall only address the matters required under § 14-36-306.

(f) The property shall be detached from the municipality on the date the county court enters the order confirming the detachment and the county clerk forwards a copy of the order as required under subdivision (e)(3)(C)(iv) of this section.

(g)(1) This section shall not prevent the municipality and the authority from presenting a joint agreement confirming their mutually agreed resolution of special considerations or factors that should be addressed before detachment at any time after the petition for detachment is filed by the authority.

(2) Absent a determination by the county court that the mutually agreed resolution under subdivision (g)(1) of this section violates Arkansas law, the county court shall accept the mutually agreed resolution and include it in the order approving detachment.

14-362-306. Special considerations relating to existing municipal debt obligations.

(a) If an authority detaches from a municipality that has previously issued and currently has outstanding bonds or other evidences of indebtedness that are secured by or payable from taxes or other revenues relating to the operations of the authority, then the detachment shall not be effective until the authority and the municipality mutually have attempted to agree in writing to a lump sum payment or recurring or periodic payments in an amount sufficient to avoid impairing the municipality's contractual obligations to the persons or entities to which payment is due.

(b) In reaching the agreement required under subsection (a) of this section, an authority and the municipality may engage with and rely on the opinions and reports of legal and financial professionals to ensure that the agreement reached by the authority and the municipality does not diminish the prospects of, or adversely interfere with, expected payments to be received by the persons or entities to which payment is due; and therefore, does not unconstitutionally impair the contract between the municipality and the persons or entities to which payment is due.

(c)(1) If an authority and a municipality cannot reach an agreement, any taxes or other revenues relating to the operations of the authority shall be collected in the same manner and amounts as if the land had not been detached.

(2) However, after a petition for detachment has been filed by the authority, the municipality:

(A) Shall not take any action to:

(i) Increase the taxes assessed or levied;

(ii) Lengthen the maturity date of the debt

obligations;

(iii) Decrease amounts paid by other persons or entities that are contributing to amounts used by the municipality to pay the debt obligations; or

(iv) Reallocate available revenues to the detriment of the authority beyond those in existence as of the date of the filing of the petition with the county court; and

(B) As permitted by the documents relating to the debt obligations, shall use or escrow all pledged taxes and revenues to pay off or prepay the debt obligations and shall not use the pledged taxes and revenues for any other purpose.

(d)(1) An authority and a municipality shall enter into a payment in lieu of taxes agreement, interlocal cooperative agreement, or similar agreement documenting the agreement reached by the authority and the municipality with respect to any taxes collected or payments made by the authority while debt obligations are outstanding.

(2) The agreement required under subdivision (d)(1) of this section shall contain terms and conditions permitting the renegotiation or revision of payments in the event of unforeseen force majeure events,

including without limitation a global pandemic or population or retail growth, that significantly modify the facts known or assumptions made in calculating the payments agreed upon.

(3) The municipality shall provide the certificates and directions to the Department of Finance and Administration that are necessary to effect the agreement between the authority and the municipality.

(e) A municipality may refinance existing debt obligations after an authority has filed a petition for detachment to achieve debt service savings so long as the refinancing does not increase annual debt service payments, extend the maturity date, or increase the aggregate amount of principal due with respect to the debt obligation.

(f) Upon the payment in full at maturity or optional redemption, other than in connection with a refunding permitted under subsection (e) of this section, the authority's property and operations shall be released and exempt from future tax collections or payments, as applicable.

(g) A municipality shall not initiate litigation alleging impairment of contract if the authority and the municipality have entered into a written agreement under subsection (d) of this section or if the county court has entered an order for detachment under § 14-362-305(e) that is consistent with subsection (c) of this section.

/s/J. Petty

APPROVED: 4/12/23