

Stricken language would be deleted from and underlined language would be added to present law.

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A Bill

SENATE BILL 138

By: Senators Hickey, Caldwell, L. Chesterfield, J. Cooper, Hester, B. King, B. Sample, G. Stubblefield, D. Wallace, E. Williams

By: Representatives Hillman, E. Armstrong, Baltz, Drown, Eaves, M.J. Gray, M. Gray, Nicks, Rushing, Sorvillo, Wardlaw

For An Act To Be Entitled

AN ACT TO CREATE A PROCEDURE FOR THE REVOCATION OF A CHARTER OF A MUNICIPAL CORPORATION AS A RESULT OF THE MUNICIPAL CORPORATION'S NONCOMPLIANCE WITH THE LAW; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE A PROCEDURE FOR THE REVOCATION OF A CHARTER OF A MUNICIPAL CORPORATION AS A RESULT OF THE MUNICIPAL CORPORATION'S NONCOMPLIANCE WITH THE LAW.

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

SECTION 1. Arkansas Code § 14-74-102(D)(vi), concerning taxing agencies and instrumentalities, is amended to read as follows:

(vi) ~~Any~~ A city, town, village, borough, township, or other *municipality, a receiver of a city, town, village, borough, township, or municipality, or an improvement district of a public utility created under § 14-62-109(c)(5).*

SECTION 2. Arkansas Code § 14-74-103(b), concerning the authority to use federal finance laws, including bankruptcy laws, is amended to read as follows:

(b) This chapter expresses the consent of the state for the



institution of bankruptcy proceedings by ~~any and~~ all such taxing agencies acting through their governing *boards, through a receiver under § 14-74-102(D)(vi), or through an improvement district under § 14-74-102(D)(vi).*

SECTION 3. Arkansas Code Title 14 is amended to add an additional chapter to read as follows:

CHAPTER 62

REVOCATION OF CHARTER OF A MUNICIPAL CORPORATION

14-62-101. Authority generally.

The charter of a municipal corporation may be revoked, its offices abolished, and the territory and inhabitants returned to the county in which the municipal corporation is located in the manner provided in this chapter, subject to the authority of the receiver appointed under § 14-62-104 and to the interests of creditors.

14-62-102. Revocation due to noncompliance.

(a)(1) If the Legislative Joint Auditing Committee concludes the process under § 14-59-117 on a municipal corporation, and in the immediately subsequent three-year period the Legislative Joint Auditing Committee concludes the process a second time, the Legislative Joint Auditing Committee may notify the Attorney General and the Governor of its actions.

(2) The Attorney General shall file pleadings in the circuit court of the Sixth Judicial Circuit to revoke the charter of the municipal corporation based on the notification under subdivision (a)(1) of this section.

(b) Upon a finding that the conditions under subsection (a) of this section have been met, the circuit court of the Sixth Judicial Circuit shall revoke the charter of a municipal corporation under this section, and the clerk of the circuit court shall certify a transcript of the order under the official seal of the clerk and forward a copy of the transcript to the:

- (1) Secretary of State;
- (2) Arkansas Geographic Information Systems Office;
- (3) Governor; and
- (4) County judge of the county in which the municipal

corporation is located.

14-62-103. Surrender and repeal of charter.

(a)(1) When the circuit court of the Sixth Judicial Circuit issues an order revoking the charter of a municipal corporation under § 14-62-102, the order is effective upon the qualification and appointment of the receiver.

(2) Once an order becomes effective under subdivision (a)(1) of this section:

(A) The charter of the municipal corporation is surrendered and repealed;

(B) The population and territory governed under the charter are returned back to the county in which the municipal corporation is located, subject to the authority of the receiver appointed under § 14-62-104 and to the interests of creditors;

(C) The offices held under the charter are abolished;

(D) The power of taxation vested in or exercised by the municipal corporation is withdrawn, unless otherwise specified under this chapter;

(E)(i) Title to all property, whether real, personal, mixed, tangible, or intangible, of the municipal corporation is transferred to the receiver appointed under § 14-62-104, unless otherwise specified under this chapter.

(ii)(a) The receiver shall take immediate possession of and control over the property.

(b) The receiver shall execute any necessary documentation transferring his or her interest in the property to the county if the property is no longer needed for the purposes under this chapter;

(F) All ordinances, regulations, codes, or other laws promulgated by the municipal corporation and its agencies are repealed and are void; and

(G) All licenses, permits, and similar documents issued by the municipal corporation are void.

(b) Until a final order of dissolution is entered under § 14-62-114, the receiver appointed under § 14-62-104 shall continue to collect the share of:

(1) General revenue turnback funds, as defined in the Revenue

Stabilization Law, § 19-5-101 et seq., that the municipal corporation is entitled to under § 27-70-207;

(2) County and state taxes that were being paid to the municipal corporation; and

(3) Any other funds, revenues, or fees as otherwise provided under this chapter.

14-62-104. Receiver – Appointment – Oath – Duties – Authority.

(a) Within five (5) business days of receipt of the order revoking the charter of a municipal corporation under § 14-62-102, the Governor shall appoint a qualified officer, to be known as "the receiver", for an extinct municipal corporation whose charter has been revoked under this chapter.

(b) A receiver shall:

(1) Take the oath required of other collectors of public revenue and give bond with good sureties to be approved by the circuit court of the Sixth Judicial Circuit;

(2) Enter upon the duties of the office as soon as appointed and qualified;

(3) Take possession of:

(A) All books, papers, and documents pertaining to the assessment and collection of taxes of the extinct municipal corporation; and

(B) Any property belonging to the extinct municipal corporation; and

(4) Resolve the outstanding indebtedness of the extinct municipal corporation pursuant to this chapter.

(c)(1) The receiver may be removed at any time by the circuit court of the Sixth Judicial Circuit for good cause, including failure to discharge one (1) or more duties imposed by this chapter.

(2) Removal may be upon:

(A) The circuit court's own motion; or

(B) The motion of:

(i) A person interested as an inhabitant of the extinct municipal corporation;

(ii) A creditor of the extinct municipal corporation;

(iii) The county judge of the county in which the

extinct municipal corporation was located; or

(iv) The Attorney General on behalf of the state.

(3) A substitute receiver shall be appointed in the same manner as the initial receiver appointed under this chapter.

(4) The office of the receiver shall cease and terminate at the time a final order of dissolution is entered under § 14-62-114.

(d) The receiver may:

(1) Employ attorneys, accountants, or other persons to assist in performing the duties of the receiver, to be paid out of the funds collected by the receiver;

(2) Sue or be sued;

(3) Take possession and control of all property, whether real, personal, mixed, tangible, or intangible, of the extinct municipal corporation;

(4) Enforce all contracts of the extinct municipal corporation, subject to the rights of creditors;

(5) Receive fees, taxes, and other charges, collect debts, and otherwise enforce all claims of the extinct municipal corporation for money owed;

(6) Exercise any other powers conferred in this chapter expressly or by necessary implication; and

(7) Take any other action necessary and beneficial to the extinct municipal corporation's former inhabitants, creditors, or other interested persons, upon approval of the circuit court.

(e) If the receiver takes possession and control of any property of the extinct municipal corporation, the receiver may manage or operate the property as necessary to collect debts, preserve the property, and generate income, all for the benefit of the inhabitants, creditors, bondholders, or any other interested persons or entities of the extinct municipal corporation.

14-62-105. Reports and collections by receiver.

(a) Every six (6) months, a receiver for an extinct municipal corporation appointed under § 14-62-104 shall make to the circuit court of the Sixth Judicial Circuit a clear and complete statement reflecting all moneys collected, all taxes collected and settled, and all taxes that remain

to be collected and settled.

(b)(1) The Department of Finance and Administration shall continue to administer and to collect as provided by law all sales and use taxes of the extinct municipal corporation.

(2) The department shall remit collection of the taxes under subdivision (b)(1) of this section to the receiver appointed under § 14-62-104.

(c)(1)(A) At least one (1) time per month, the receiver shall pay into the State Treasury the whole sum collected or received from taxes.

(B) The receiver shall distinguish the respective sources from which the moneys paid in are derived, reflecting what is collected from taxes for general purposes and what is collected for special purposes, and designating the general or special purpose, so that the moneys may be kept separate in the State Treasury.

(2)(A) At least one (1) time per month, the receiver shall pay into a bank approved under § 19-8-105 the whole sum collected and received from any nontax revenue sources.

(B) The receiver shall distinguish the respective sources from which the moneys paid in are derived, so that the moneys may be kept separate in the bank under subdivision (c)(2)(A) of this section.

14-62-106. Compensation of receiver.

(a) A receiver appointed under § 14-62-104 shall receive such compensation for his or her services as shall be fixed by the circuit court of the Sixth Judicial Circuit.

(b) As the circuit court may allow, a receiver shall have credit for all taxes, expenses, attorney's fees, and other necessary disbursements in the execution of the receiver's duties, to be paid out of the funds collected by the receiver.

(c) If insufficient funds have been collected under this chapter to compensate the receiver, the circuit court may request the Governor to transfer adequate funds to compensate the receiver from the available funds.

14-62-107. Audit of receiver.

A receiver appointed under § 14-62-104 is subject to audit by Arkansas Legislative Audit:

(1) At the request of the:

(A) Circuit court of the Sixth Judicial Circuit; or

(B) County judge of the county in which the extinct municipal corporation was situated; or

(2) At the discretion of the Legislative Auditor.

14-62-108. Proceedings to collect revenue due.

(a)(1) For the purpose of collecting the revenue under this chapter, a receiver appointed under § 14-62-104 may file proceedings in the name of the receiver on behalf of all creditors and against taxpayers who owed taxes to the extinct municipal corporation, in cooperation with the Department of Finance and Administration under § 14-62-111.

(2) The proceedings shall be filed in the circuit court of the Sixth Judicial Circuit.

(b) All pending lawsuits involving the extinct municipal corporation in connection with the collection of taxes or the payment of indebtedness are revived in the name of the receiver and consolidated with the proceedings provided for in this section, in cooperation with the Department of Finance and Administration under § 14-62-111.

(c)(1)(A) The circuit court may settle and adjust all equities, priorities, and liens and give all appropriate relief.

(B) The circuit court may enforce all liens upon property for the payment of the taxes and order and make all sales of property necessary to the collection of the taxes.

(C) The taxes embraced by this section, and which this section provides for, are all taxes imposed by the extinct municipal corporation before the revocation under this chapter and shall continue to be fully collected after the revocation under this chapter up to the time of the full accord and satisfaction of the indebtedness for which the taxes were levied, and no other taxes.

(2) The circuit court shall include in the proceedings only those taxpayers of the extinct municipal corporation so that no other citizens of the county shall be responsible for the payment of taxes owed to or the debts of the extinct municipal corporation, except as otherwise provided under this chapter or for other pledged or dedicated sales and use taxes of the extinct municipal corporation.

(3) The circuit court or receiver shall not raise any rate of taxation in effect as of the date of the entry of an order revoking the charter of a municipal corporation under § 14-62-102.

14-62-109. Public utilities.

(a) A public utility operating and organized as an improvement district and serving residents of the extinct municipal corporation shall continue in operation.

(b)(1)(A) A public utility operated by the extinct municipal corporation is transferred to the receiver.

(B) Funds held by the extinct municipal corporation in connection with the operation of the public utility are transferred to the receiver, including without limitation customer deposits and debt reserve funds.

(2) The receiver shall continue to:

(A) Operate the public utility;

(B) Collect all fees and taxes due to and all funds associated with the public utility; and

(C) Continue to pay any bonded indebtedness of the public utility.

(3) The transfer of the public utility to the receiver is subject to any liens held on the public utility that existed at the time of the transfer under this chapter, including without limitation mortgages and security interests.

(4) If a public utility is transferred under this section, the Department of Finance and Administration shall continue to collect as provided by law pledged or dedicated sales and use taxes levied for bonded indebtedness of the public utility and remit the collections to the receiver under § 14-62-105(b) until the indebtedness is satisfied.

(c) Within sixty (60) days of the appointment of the receiver under § 14-62-104, the receiver shall publish a notice in a newspaper with general circulation in the county in which the municipal corporation is located that the opportunity for the acquisition of the public utility shall:

(1)(A) Be first extended to an adjacent municipality located within five (5) miles of the extinct municipal corporation, and if a majority of the governing body of the adjacent municipality votes to acquire the

public utility under this subdivision (c)(1)(A), the acquisition transaction shall be completed within one hundred eighty (180) days of the appointment of the receiver under § 14-62-104.

(B) If more than one (1) adjacent municipality located within five (5) miles of the extinct municipal corporation votes to acquire the public utility under subdivision (c)(1)(A) of this section, the adjacent municipalities shall be given priority based on population from largest to smallest;

(2)(A) Be next extended to the county in which the extinct municipal corporation is located if the public utility is not acquired by an adjacent municipality under subdivision (c)(1) of this section.

(B) If a majority of the governing body of the county in which the extinct municipal corporation is located votes to acquire the public utility under subdivision (c)(2)(A) of this section, the acquisition transaction shall be completed within two hundred seventy (270) days of the appointment of the receiver under § 14-62-104;

(3)(A)(i) Be next extended to an adjacent public utility operated and organized as an improvement district and located within five (5) miles of the extinct municipal corporation if the public utility is not acquired by the county in which the extinct municipal corporation is located under subdivision (c)(2) of this section.

(ii) If a majority of the governing body of the adjacent public utility improvement district votes to acquire the public utility under subdivision (c)(3)(A)(i) of this section, the acquisition transaction shall be completed within three hundred sixty (360) days of the appointment of the receiver under § 14-62-104.

(B) If more than one (1) adjacent public utility improvement district located within five (5) miles of the extinct municipal corporation votes to acquire the public utility under subdivision (c)(3)(A) of this section, the adjacent public utility improvement districts shall be given priority based on evidence of economic viability and the number of customers served from largest to smallest;

(4) Be next extended to an entity other than the entities listed in subdivisions (c)(1)-(3) of this section if none of the entities listed in subdivisions (c)(1)-(3) of this section acquire the public utility of the extinct municipal corporation, and the acquisition transaction shall be

completed within four hundred fifty (450) days of the appointment of the receiver under § 14-62-104; and

(5)(A)(i)(a) Not be further extended and remain with the receiver if none of the entities in subdivisions (c)(1)-(4) of this section acquire the public utility of the extinct municipal corporation.

(b) The receiver shall establish a suburban improvement district to operate the public utility using the authority set out in § 14-92-201 et seq. for the purpose of the institution of bankruptcy proceedings for the public utility.

(ii)(a) A suburban improvement district created under subdivision (c)(5)(A)(i) of this section is created by operation of law without the statutory requirements under § 14-92-201 et seq. concerning petitions or hearings or other statutory requirements at the discretion of the circuit court of the Sixth Judicial District.

(b) The receiver shall serve as the board of commissioners, and the boundaries of the suburban improvement district created under subdivision (c)(5)(A)(i) of this section shall include the service area of the public utility of the extinct municipal corporation.

(iii) A suburban improvement district created under subdivision (c)(5)(A)(i) of this section is considered an instrumentality of the state for purposes of bankruptcy proceedings.

(B) At the conclusion of any bankruptcy proceeding instituted under subdivision (c)(5)(A) of this section, the public utility shall be transferred to the county.

(d) The receiver may request a reasonable extension of time from the circuit court of the Sixth Judicial District for the purpose of the completion of an acquisition of a public utility under subsection (c) of this section.

14-62-110. Retirement.

(a) Moneys due and owing the Arkansas Local Police and Fire Retirement System under § 24-10-101 et seq. or due and owing a local firemen's relief and pension fund or a local policemen's pension and relief fund under § 24-11-101 et seq. are not subject to the proceedings under this chapter and are transferred to the control of the system.

(b)(1)(A) A local firemen's relief and pension fund or a local

policemen's pension and relief fund created under § 24-11-101 et seq. that is not subject to the administration of the system at the time of the order entered under § 14-62-102 is consolidated with the system.

(B)(i)(a) The actuary under contract to the system shall compute the retirement reserve for vested and active members and for eligible beneficiaries of a local firemen's relief and pension fund or a local policemen's pension and relief fund.

(b) After receiving the report of the actuary, the receiver shall transfer the computed reserve to the system to be held in an account designated as the retirement reserve for a local firemen's relief and pension fund or a local policemen's pension and relief fund and from which the system shall pay eligible beneficiaries.

(ii) If the retirement reserve of a local firemen's relief and pension fund or a local policemen's pension and relief fund is inadequate to pay full benefits to eligible recipients, the receiver may reduce benefits based on such actuarially computed amounts as are necessary to pay eligible recipients, without impairing contracts and to the extent allowed under law.

(iii)(a) The receiver shall continue to collect such millages, fines, fees, state insurance tax turnbacks, and other revenues as allowed by law for the support of a local firemen's relief and pension fund or a local policemen's pension and relief fund.

(b) When a final order of dissolution is entered under § 14-62-114, the millages, fees, state insurance tax turnbacks, and other revenues as allowed by law shall be paid to the system.

(2)(A) Pledged or dedicated taxes levied by the extinct municipal corporation at the time of the order under § 14-62-102 for a local firemen's relief and pension fund or a local policemen's pension and relief fund shall continue to be collected until the indebtedness is satisfied.

(B) When a final order of dissolution is entered under § 14-62-114, pledged or dedicated taxes collected under subdivision (b)(2)(A) of this section shall continue to be collected and remitted to the system until the indebtedness is satisfied.

(c)(1) The system shall refund all member contributions made to the system or fund applicable to the extinct municipal corporation to a member who has not yet vested in the system or in a local firemen's relief and

pension fund or a local policemen's pension and relief fund at the time of the order entered under § 14-62-102.

(2) Service credit earned with the extinct municipal corporation by a nonvested member under the system is cancelled, and any member contributions relating only to the extinct municipal corporation shall be refunded to the nonvested member.

14-62-111. Department of Finance and Administration – Collection of sales and use taxes.

(a) If a receiver is appointed under § 14-62-104, sales and use taxes of the extinct municipal corporation shall continue to be collected in the manner provided by law by the Department of Finance and Administration, with the collections paid to the receiver for the benefit of the extinct municipal corporation.

(b) At the time a final order of dissolution is entered under § 14-62-114, the collection of sales and use taxes of the extinct municipal corporation shall cease, except as otherwise provided under this chapter.

(c) Delinquent sales and use taxes of the extinct municipal corporation shall continue to be collected in the manner provided by law, and the Department of Finance and Administration and the receiver shall cooperate in the collection of the delinquent sales and use taxes.

14-62-112. Filing of claims – Appeals.

(a)(1) If a party is dissatisfied with the decision of any litigated question under this chapter, he or she may have the question reheard upon appeal to the Supreme Court.

(2) Only so much of the record as pertains to the appeal shall form the transcript and record for the appeal.

(b)(1) Except as provided under subdivision (b)(2) of this section, the costs shall be paid by the parties to the appeal as the Supreme Court may direct.

(2) If the receiver appointed under § 14-62-104 is a party to the litigation on behalf of creditors generally, the costs may be charged to the whole or to some particular fund if the Supreme Court deems proper and as right and justice may require.

14-62-113. Payment of funds collected.

Funds collected under this chapter shall be paid out from time to time to those entitled to the funds and in such manner as the circuit court of the Sixth Judicial Circuit may determine, on the warrant of the receiver appointed under § 14-62-104 and countersigned by the judge of the circuit court.

14-62-114. Final order of dissolution.

At the time of the full accord and satisfaction of the indebtedness of the municipal corporation whose charter is revoked under this chapter and upon the request of the receiver, the circuit court of the Sixth Judicial Circuit shall enter a final order of dissolution.

SECTION 4. Arkansas Code § 19-8-101(b), concerning definitions, is amended to read as follows:

(b) "Public funds" or "funds" means any and all kinds of funds handled by treasurers, collectors, commissioners, sheriffs, ~~and~~ clerks, and receivers appointed under § 14-62-104.

SECTION 5. Arkansas Code § 19-8-102 is amended to read as follows:

19-8-102. Legal funds.

The legal funds referred to in §§ 19-8-101 – 19-8-107 as being eligible for deposit in depositories shall include any and all funds that may come into the hands of all treasurers, collectors, commissioners, sheriffs, ~~and~~ clerks, and receivers by reason of their official capacities as commissioners.

SECTION 6. Arkansas Code § 19-8-106, concerning depository boards, is amended to add an additional subsection to read as follows:

(e) A receiver appointed under § 14-62-104 shall be a designated depository and supervise the depositing of funds collected under § 14-62-101 et seq.

SECTION 7. Arkansas Code § 19-8-202, concerning the definition of "public funds", is amended to add an additional subdivision to read as follows:

(6) A receiver appointed under § 14-62-104.

/s/Hickey