

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 510

By: Senator B. Ballinger
By: Representative Breaux

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING SUBURBAN
IMPROVEMENT DISTRICTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING SUBURBAN
IMPROVEMENT DISTRICTS.

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

SECTION 1. Arkansas Code § 14-92-201, concerning definitions, is amended to add an additional subdivision to read as follows:

(6) "Property owner" means a fee simple owner of a distinct real property parcel within the district with an ad valorem tax parcel number assigned by the county or counties in which the district lies.

SECTION 2. Arkansas Code § 14-92-219 is amended to read as follows:

14-92-219. Purposes for which district organized or expanded.

A suburban improvement district may be organized for, or may expand by resolution at a later date to include, any one (1) or more of the following purposes:

(1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without the boundaries of the district, if the property of the district will benefit and to operate and maintain any such waterworks system it may purchase, construct, or own;

(2) To purchase, accept as a gift, or construct, either within



or without the boundaries of the district, if the property of the district will benefit, a sewage collection system or a sewage treatment plant or intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection or treatment, purification, and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil, and industrial waste of the area within the boundaries of the district or adjacent thereto, and to operate and maintain any such sewage system and facilities;

(3)(A) To open, grade, drain, pave, curb, gutter, or otherwise improve streets, roads, highways, and every other way for passage and use of vehicles, including viaducts and underpasses, either within or without the boundaries of the district, if the property of the district will benefit.

(B) ~~Such purpose shall include~~ This subdivision (3)(A) includes the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain, and to maintain such streets, roads, highways, and every other way for passage and use by vehicles, lying within the boundaries of the district or beyond the boundaries of the district, if the property of the district will benefit;

(4) To build, purchase, or accept as a gift recreational facilities such as, but not limited to, parks, lakes, golf courses, playgrounds, clubhouses, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, greenbelt areas, and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district and also to care for, maintain, and operate any such recreational facilities;

(5) To lay and maintain sidewalks;

(6)(A) To lay, own, extend, operate and maintain gas pipelines connecting with gas systems.

(B)(i) ~~Nothing in this~~ This subchapter shall not be construed to allow the purchase of an existing natural gas system or any part thereof.

(ii) Any such gas system shall be subject to the jurisdiction of the Pipeline Safety Division of the Arkansas Public Service Commission and shall be subject to all provisions of the Arkansas Gas Pipeline Code;

(7) To build telephone lines to connect with the telephone

systems operating in nearby or adjacent municipalities;

(8) To establish, equip, train, and maintain rural fire departments, including without limitation construction of fire department buildings, purchase of fire trucks, fire boats, rescue trucks, and any other firefighting equipment and supplies necessary to provide emergency response to a fire, medical, or other hazardous situation;

(9) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate hospitals ~~or~~ and to acquire appropriate vehicles and equipment for, maintain, and operate ambulance services;

(10) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate libraries; ~~and~~

(11)(A) To provide a solid waste management system to adequately provide for the collection and disposal of all solid wastes generated or existing within the boundaries of the district in accordance with the rules, regulations, and orders of the Arkansas Pollution Control and Ecology Commission.

(B)~~(i)~~ The governing body of the district may enter into an agreement with one (1) or more municipalities, counties, county solid waste authorities, regional solid waste management districts, private persons, private trusts, or any combination thereof, to provide a solid waste management system or any part of a system for the district~~;~~

~~(ii)(a)~~(12) The To provide security services including without limitation patrol and protection of district property and residents; and

(13)(A) To effectuate any of the purposes of this section, a district may levy and collect fees and require licenses as determined appropriate to discharge the responsibilities of the district.

~~(b)~~(B) Any fees, charges, and licenses shall be based upon a schedule set forth by the district.

(C) A district may open district facilities and services to individuals who are not property owners in the district.

SECTION 3. Arkansas Code § 14-92-220 is amended to read as follows:
14-92-220. Powers of districts generally.

(a)(1) Any district, in aid to and furtherance of the purposes prescribed in § 14-92-219, ~~shall have the authority to~~ may hire managers and

other employees and to pay their salaries incident to the operation and maintenance of any of the improvements and facilities authorized in this subchapter.

(2) The district ~~shall also have the authority to~~ may acquire, lease, rent, and purchase equipment and machinery incident to the operation and maintenance of the facilities and ~~shall be further authorized to~~ may do any and all other actions ~~which shall be deemed~~ necessary in order to purchase, construct, accept as a gift, operate, and maintain any and all improvements and facilities authorized in this subchapter, including without limitation advertising.

(b)(1) Any district ~~shall have the power to~~ may sell ~~or,~~ lease, or contract for the operation and maintenance of all or any part of any improvement owned by it to a municipality that encompasses all or part of the geographic boundaries of the district, to any adjacent or nearby municipality, to an improvement district therein, to public service corporations serving on behalf of the property owners of the district, or to any other corporation, organization, or person.

(2) It may make contracts with the inhabitants of an adjacent municipality, a nearby municipality, or municipalities the district is within, or it may operate ~~such~~ improvements for water, sewer, gas, recreation, or telephone service and may connect sewers with the sewers of any adjacent municipality or of other districts, or carry its sewers to any proper outlet within or without the district.

(c) Any district may accept as a gift any or all of the improvements and facilities authorized in this subchapter upon the assumption of the maintenance and operation of such improvements and facilities. ~~It~~

(d) A district shall have the authority to effect the assessment of benefits and to levy the necessary tax against such assessment of benefits, as prescribed in this subchapter in order to provide ~~the~~ revenue for the costs of maintenance and operation.

(e) A district may create reserve accounts as part of the district's accounting system to collect funds for large or unanticipated future expenses.

SECTION 4. Arkansas Code § 14-92-222(b)(1), concerning the right and power of eminent domain, is amended to read as follows:

(b)(1) Any district shall have the power of eminent domain for the purposes of:

(A) Condemning any water or sewer utility found within the boundaries of the district which is exempt from the definition of “public utility” as found in § 23-1-101(4);

(B) Securing any lands or rights-of-way needed in making improvements to water or sewer systems owned and operated by that district, or needed to correct deficiencies in rights-of-way or drainage structures owned or maintained by the district.

SECTION 5. Arkansas Code § 14-92-225, concerning assessment of benefit and damages, is amended to add an additional subdivision to read as follows:

(g) In assessing benefits or damages under this section, the assessor may employ a methodology that differentiates tracts of property based on characteristics deemed appropriate by the assessor.

SECTION 6. Arkansas Code § 14-92-228(a)(2), concerning levy of tax, is amended to read as follows:

(2)(A) The tax is to be paid by the real property in the district in proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, not to exceed ten percent (10%) for any one (1) year, as provided in the order.

(B) At any one (1) time, a property owner shall not pay more than the annual levy of tax under this section and any applicable past due taxes, interest, and penalties.

SECTION 7. Arkansas Code § 14-92-229 is amended to read as follows:
14-92-229. Interest on assessments.

(a) The assessment of the benefits shall bear interest at a rate or rates from the time it is equalized, at a rate not to exceed that required to service the bonds, or at the maximum interest rate allowed by law if no bonds issue rate of ten percent (10%), whichever is greater. However, the

(b) The interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

SECTION 8. Arkansas Code § 14-92-236 is amended to read as follows:

14-92-236. Public contributions to ~~road or street improvement~~ districts.

(a)(1) The county court is authorized to turn over to any ~~road or street improvement~~ district organized under this subchapter that includes road and street improvements and maintenance as one (1) of its purposes that proportion of the road tax, and any portion of the automobile or gasoline tax as may be just and equitable, ~~or any portion of the automobile or gasoline tax.~~

(2) The county court is further authorized to contribute these funds in money or scrip to the expense of the improvement from the general revenue of the county as it may deem appropriate.

(b)(1) Any ~~such~~ district is authorized to receive any part of the funds that may be set aside by the federal government for the improvement of public roads and any that may be set aside by the government of this state for aid in the improvement of public roads.

(2) The board of commissioners of the district and the Arkansas Department of Transportation ~~are authorized and directed to~~ shall take ~~such~~ action ~~as may be~~ necessary to secure any of these funds for these districts as an improvement of a part of the public roads of the state in which the state has an interest.

SECTION 9. Arkansas Code § 14-92-239 is amended to read as follows:

14-92-239. Continued existence of district.

(a) Suburban improvement districts shall not cease to exist upon the acquiring, construction, or completion of the improvement but shall continue to exist for the purpose of preserving, maintaining, and operating the improvement, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in this subchapter.

(b) To this end, the board of commissioners may, ~~from time to time,~~ make ~~such~~ additional levies based upon the assessment of benefits as ~~may be~~ necessary ~~for these purposes. However, the amount of the total levies shall not exceed the assessed benefits and interest thereon.~~

SECTION 10. Arkansas Code § 14-92-240 is amended to read as follows:

14-92-240. Districts of less than six thousand lots – Alteration of

number of and method of selecting commissioners.

(a) Any suburban improvement district which contains fewer than six thousand (6,000) lots and which selects successor commissioners by a vote of the remaining commissioners may alter the number and method of selection of members of the board of commissioners of the district ~~pursuant to~~ under this section.

(b)(1)(A) Any property owner in the suburban improvement district may make a written request for an election on the question of whether to change the method of selecting the board of commissioners of the district.

(B) The request shall be filed with a quorum court member whose district includes all or part of the suburban improvement district.

(2) The property owner filing the request shall be responsible for all costs of the election and any notice required under this subsection ~~(b) of this section~~.

(3)(A) Within forty-five (45) days after receiving the request, the quorum court member shall mail, by first class mail, ballots to all property owners in the district, along with a copy of this section.

(B) The date for returning ballots shall be set by the quorum court member and shall not be less than twenty (20) days after the date he or she mailed the ballots to property owners.

(C) Ballots shall not be valid unless signed by the property owner and mailed within the time allowed.

(4)(A) Two (2) votes shall be awarded for each property.

(B) The interests of time-share owners shall be voted by the time-share owners' association on the same basis.

(5) A majority of the votes cast on the issue shall be required for passage of the measure.

(6)(A) The quorum court member who conducted the election shall notify the property owners of the results of the election.

(B) If the measure passes, the notice shall include the notice of the meetings for nomination and election.

(7) The commissioners serving on the board at the time of the approval of the measure shall continue to serve until a new board is elected.

(c)(1)(A)(i) Not more than sixty (60) days nor less than thirty (30) days after the measure is approved, the quorum court member who conducted the election under subsection (b) of this section shall hold a meeting to accept

nominations for the new commissioners.

(ii) Nominations for commissioners shall be made by property owners.

(B)(i) The commissioners shall be elected, from among those nominated, provided that nominees are current on all monies owed and due to the district as of the close of business on the day before the nomination meeting date.

(ii) The election shall be held at a subsequent public meeting ~~to be held~~ not less than thirty (30) days after the meeting to nominate commissioners.

(C) Notice of the meetings ~~shall be mailed to each property owner at least thirty (30) days prior to~~ shall be published once a week for four (4) consecutive weeks in a newspaper having general circulation in the district and on any district website before the meeting to nominate commissioners.

(D) The notice shall include the following information:

(i) The time, place, and date of the meetings to nominate and elect a new board of commissioners;

(ii) How to request an absentee ballot; and

(iii) The qualifications for voting in the election.

(2)(A) Each property owner in attendance at the meeting to nominate ~~shall be entitled to~~ may nominate one (1) district resident property owner.

(B)(i) Each property owner shall be entitled to only one (1) vote for each position of commissioner to be filled, without regard to the number of properties owned.

(ii) If a property is owned by more than two (2) named persons on the deed, only the first two (2) named persons may vote.

(iii) If a property is owned by a corporation, trust, or other legal entity, the vote is limited to two (2) votes to be cast by individuals designated by the entity in writing by a properly authorized officer of the entity.

(iv) Time-share associations are entitled to two (2) votes to be cast by individuals designated by the time-share association in writing by a properly authorized officer of

the association.

(v) A person designated to vote on behalf of a corporation, trust, other legal entity, or time-share association is limited to one (1) vote per commissioner position to be filled, provided the person is not a property owner of other property in the district.

(C)(i) A property owner may cast his or her vote in person at the meeting conducted to elect commissioners or may vote by an absentee ballot.

(ii) Absentee ballots ~~must~~ shall be received ~~prior to~~ before the meeting held to elect commissioners. ~~Any~~

(iii) An absentee ballot may be requested by any property owner or other person designated under subdivision (c)(2)(B) of this section and who is eligible to vote.

(3)(A) A meeting shall be held annually to nominate successor members, and a subsequent meeting shall be held to elect successor members.

(B) The annual meetings shall be conducted by the board, after the board has established written policies on the:

- (i) Meeting format;
- (ii) Voting and tabulation procedures;
- (iii) Absentee ballot process; and
- (iv) Other matters necessary to ensure integrity.

(C) The same notice requirements ~~as~~ for the initial meetings for nomination and election of commissioners ~~shall~~ apply to the annual meetings for nomination and election of commissioners.

(D) If there is only one (1) nominee per board position to be filled, the nominee shall be declared elected and no election shall be held for that year.

(E) If the nominations submitted are not sufficient to fill the vacancies in board positions, vacancies shall be filled under subdivision (d)(4)(A) of this section.

(4) The cost of the election held to select commissioners under this subsection shall be borne by the district.

(d)(1) The new board of commissioners shall consist of five (5) members, who shall serve staggered terms of three (3) years.

(2) The terms of office of initial members shall be determined

as follows:

(A) The individuals receiving the highest and second highest number of votes shall serve an initial term of three (3) years;

(B) The individuals receiving the third and fourth highest number of votes shall serve an initial term of two (2) years; and

(C) The individual receiving the fifth highest number of votes shall serve an initial term of one (1) year.

(3)(A) If two (2) commissioners are to be elected at an annual meeting, the individuals receiving the highest and second highest number of votes shall be elected.

(B) If one (1) commissioner is to be elected at an annual meeting, the individual receiving the highest number of votes shall be elected.

(4)(A) Vacancies occurring on the board shall be filled until the next annual election by a majority vote of the remaining commissioners.

(B)(i) At the annual election, the position shall be filled for the remainder of the unexpired term.

(ii) If two (2) commissioners are to be elected at the annual meeting, the individual receiving the second highest number of votes shall fill the vacancy for the unexpired term.

(iii) If three (3) commissioners are to be elected at the annual meeting, the individual receiving the third highest number of votes shall fill the vacancy for the unexpired term.

(5) ~~Whenever~~ If any member of the board fails to attend a majority of the meetings of the board during any six-month period, the board shall declare the position vacant, and the position shall be filled ~~in the same manner as by this section for other vacancies~~ under subdivision (d)(4)(A) of this section.

(6)(A) Nominee and elected commissioners shall be resident property owners.

(B) If a commissioner no longer is a resident of the district, the office shall be forfeited and considered vacant.

(C) A vacancy created under subdivision (d)(6)(B) of this section shall be filled under subdivision (d)(4)(A) of this section.

~~(e) Whenever notice is required under this section, the notice shall be given by first class mail.~~

SECTION 11. Arkansas Code § 14-92-603(d), concerning the collection of delinquent taxes, is amended to read as follows:

(d) If it is the responsibility of the eligible district to collect delinquent taxes, the district shall add to the amount of the tax a penalty of twenty-five percent (25%) and shall enforce collection by civil proceedings in the circuit court of the county and in the manner provided by ~~§§ 14-121-426—14-121-432~~ under § 14-92-604.

SECTION 12. Arkansas Code Title 14, Chapter 92, Subchapter 6, is amended to add an additional section to read as follows:

14-92-604. Payment of taxes – Enforcement.

(a) Payment. All taxes levied under the terms of this chapter are payable in installments on or before October 15 of each year.

(b) Delinquencies.

(1) If any taxes levied by the board of commissioners of a suburban improvement district under this chapter are not paid at maturity, the board shall add to the amount of the tax a penalty of twenty-five percent (25%).

(2)(A) The board shall enforce the collection by proceedings in the circuit court of the county in which the lands are situated.

(B) The court shall give judgment against the lands for the amount of the delinquent taxes, and the penalty of twenty-five percent (25%) and interest, from the end of the sixty (60) days allowed for the collection at the rate of six percent (6%) per annum, and all costs of the proceedings.

(3) The judgments shall provide for the sale of the delinquent lands for cash by a commissioner of the court, after advertisement under subsection (c) of this section.

(4) Proceedings and judgment shall be in the nature of proceedings in rem.

(5)(A) It shall be immaterial if the ownership of the lands is incorrectly alleged in the proceedings.

(B) Judgment shall be enforced wholly against the lands and not against any other property or estate of the defendant.

(6) All or any part of the delinquent lands for each of the

counties may be included in one (1) suit for each county.

(c) Notice of Proceedings for Collection of Taxes. Notice of the pendency of the suit shall be given by publication weekly for four (4) weeks before judgment is entered for the sale of the lands in some newspaper published in the county where the suits may be pending, which public notice may be in the following terms:

“Board of Commissioners, Suburban Improvement District vs. Delinquent Lands

All persons having or claiming an interest in any of the following described lands, are hereby notified that suit is pending in the Circuit Court of _____ County, Arkansas, to enforce the collection of certain suburban improvement district taxes on the subjoined list of lands, each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit: ” (Then shall follow a list of supposed owners, with a descriptive list of said delinquent lands, and amounts due thereon respectively as aforesaid), and said public notice may conclude in the following form: “All persons and corporations interested in said lands are hereby notified that they are required by law to appear within four (4) weeks and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with the payment of interest, penalty, and costs allowed by law.

Clerk of Said Court”.

(d) Trial Date – Suit by Bondholder.

(1)(A) The suit shall stand for trial at the first term of court after the complaint may be filed, if four (4) weeks shall expire either before the first day of the term, or during the term of court to which the suits are brought respectively, unless a continuance is granted for good cause shown, within the discretion of the court.

(B) The continuance, for good cause shown, may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted.

(2) In case the board shall fail to commence suit within sixty (60) days after the taxes become delinquent, the holder of any bond issued by

the district or any trustee on behalf of the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in the suit brought by the bondholder or trustee shall in all respects be governed by the provisions applicable to suits by the commissioners.

(e) Trial Procedure.

(1) Suits for collection shall be conducted in the name of the suburban improvement district, and in accordance with the practice and proceedings of circuit courts in this state, except as otherwise provided in this chapter, and attorneys ad litem or guardians ad litem are not required.

(2) The suits may be disposed of on oral testimony, as in ordinary suits at law.

(3) This law shall be liberally construed to give to the assessment and tax lists the effect of bona fide mortgage for a valuable consideration, and a first lien upon the lands, as against all persons having an interest.

(4) In such suits, it is sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeded against, and the amount chargeable to each tract, with prayer for foreclosure.

(5) Informality or irregularity in holding any of the meetings provided for herein, in valuation, in assessment of the lands, or in the name of the owners, or the number of acres therein shall not be a valid defense to the action.

(f) Sale of Land.

(1)(A) In cases in which notice has been properly given and no answer has been filed or, if filed and the cause decided for the plaintiff, the court by its decree shall grant the relief prayed for in the complaint.

(B)(i) The court shall direct the commissioner to sell the lands described in the complaint at the courthouse door of the county in which the decree is entered, at public auction to the highest and best bidder with cash in hand, after having first advertised the sale weekly for two (2) consecutive weeks in a newspaper having a general circulation in the county.

(ii) The advertisement may include all the lands described in the decree.

(2) If all the lands are not sold on the day as advertised, the

sale shall continue from day to day until completed.

(3)(A) The commissioner shall convey to the purchaser the lands by proper deed.

(B) The title to the lands shall become vested in the purchaser against all others.

(g)(1) In any case in which the lands are offered for sale by the commissioner as provided by this subchapter, and the sum of the delinquent tax due together with interest, cost, and penalty is not bid for the lands, the commissioner shall bid the lands off in the name of the board, bidding the whole amount due.

(2)(A) The commissioner shall execute his or her deed conveying the land to the suburban improvement district board.

(B) No report of sale other than the execution of the deed and its submission to the court for approval and no confirmation other than approval of the deed need be made in any case, and a deed to the land executed by the commissioner, approved by the court and recorded, shall be conclusively presumed to be in consideration of the total amount rightfully due to the district whether that amount is stated or whether it is stated correctly or incorrectly in the deed.

(3) The deeds, together with other deeds as are duly executed in conformity to the provisions of this subchapter and recorded, shall be received as evidence in all cases showing an indefeasible title in the district.

(h)(1) This section does not relieve any purchasers of lands, excluding the district, from the obligation to pay all future taxes levied under the terms of this subchapter following the enforcement of these foreclosure procedures.

(2) The obligation to pay all future taxes shall also extend to any purchaser of lands who purchases such lands from the district following the district's obtaining of the land pursuant to subsection (g) of this section.

(i) Attorney's Fees. In all suits brought for collection of delinquent taxes under this subchapter, a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the cost.

(j) Redemption.

(1) At any time within thirty (30) days after the rendition of the final decree of the chancery court provided for in this subchapter, the owner of the lands may file his or her petition in the court rendering the decree, alleging the payment of taxes on the land for the year for which they were sold and payment of all costs associated with the enforcement of the provisions of this chapter, including attorney's fees.

(2) Upon the establishment of that fact, the court shall vacate and set aside that decree, provided that any landowner shall have the right within thirty (30) days after the day upon which lands are offered for sale to redeem any and all lands sold at the sale.