

Act 276 of the 1989 Regular Session.

Act 276

SB29

By: Senator Hoofman

"AN ACT TO AMEND CERTAIN PROVISIONS OF TITLE 14, CHAPTER 94 OF THE ARKANSAS CODE OF 1987 ANNOTATED, TO PROVIDE THAT THE COMMISSIONERS OF MUNICIPAL PROPERTY OWNERS IMPROVEMENT DISTRICTS MAY, WITH THE APPROVAL OF ALL OWNERS OF PROPERTY WITHIN SUCH DISTRICTS, BE PERSONS OTHER THAN OWNERS OF PROPERTY WITHIN SUCH DISTRICTS; TO PROVIDE THAT ELECTRIC DISTRIBUTION AND TELEPHONE DISTRIBUTION SYSTEMS MAY BE FINANCED BY SUCH DISTRICTS; TO CLARIFY THAT MEMBERS OF THE BOARDS OF COMMISSIONERS OF SUCH DISTRICTS MAY BE HELD LIABLE FOR DAMAGES IF THEY SHALL HAVE ACTED WITH A CORRUPT INTENT; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code of 1987 Annotated, Section 14-94-105, is hereby amended to read as follows:

"14-94-105. Petition to form district.

(a) Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county, all the real property of which territory is owned by twenty-five (25) or fewer persons, it shall be the duty of the governing body to:

(1) Lay off into an improvement district the territory described in the petition for the purpose of purchasing, accepting as a gift, constructing, or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes; and

(2) Name as commissioners of the district the three (3) individuals whose names appear in the petition if the petition contains those names and, if not, then three (3) individuals of integrity and good business ability.

(b) All the districts shall be numbered consecutively and shall receive names selected by the governing body. If the governing body does not act promptly in complying with the terms of this section, or of any other section of this chapter essential to the creation and operation of the district, it may be compelled to do so by mandamus.

(c) Any number of petitions may be circulated, and identical petitions with additional names may be filed at any time until the governing body acts."

SECTION 2. Arkansas Code of 1987 Annotated, Section 14-94-106, is hereby amended to read as follows:

"14-94-106. Hearing on petition and determination.

(a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.

(2) The mayor shall thereupon set a date and time, not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the

petition.

(b) (1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

(2) (A) If the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition if commissioners are named in the petition.

(B) The petition shall state the specific purposes for which the district is to be formed, and the ordinance establishing the district shall give it a name which shall be descriptive of the purpose. It shall also receive a number to prevent its being confused with other districts for similar purposes.

(c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

(d) The findings of the governing body shall be conclusive unless attacked by a suit in the chancery court of the county in which the municipality is located, which suit is brought within thirty (30) days after the publication."

SECTION 3. Arkansas Code of 1987 Annotated, Section 14-94-108, is hereby amended by adding a new paragraph at the end thereof to read as follows:

"(d) No member of the board shall be liable for any damages unless he or she shall have acted with a corrupt intent."

SECTION 4. Arkansas Code of 1987 Annotated, Section 14-94-112, is hereby amended to read as follows:

"14-94-112. Right of eminent domain.

(a) All districts organized under this chapter shall have the right of eminent domain in order that they may carry out the purposes of their creation.

(b) This right shall be exercised in the same manner as in the case of railroad, telegraph, and telephone companies, but without the necessity of making a deposit of money before entering into possession of the property condemned.

(c) Nothing in this chapter shall be construed to authorize any property owner improvement district to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn or otherwise acquire a utility generating plant, transmission or distribution system owned or operated by a regulated public utility."

SECTION 5. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7. The provisions of this Act are severable. If any provision shall be held to be invalid or to be inapplicable to any person or circumstance, such holding shall not affect the validity or the applicability of the remainder hereof.

SECTION 8. It has been found and it is hereby declared that municipal property owners improvement districts may be formed only upon the petition of

all owners of real property located in the territory included in such districts, that it is not feasible in all such districts to require that all commissioners thereof be owners of real property therein, that such a requirement exclude from service as commissioners persons who are qualified so to serve and who would be chosen so to serve by all the owners of real property therein, that the present law impairs the formation and operation of districts which are essential to the orderly and proper growth of municipalities, some of which districts must be and have been formed to accomplish improvements which are urgently needed. Therefore, an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval and shall apply to municipal property owners districts now being formed or already formed, provided that all owners of real property in such districts shall have petitioned for or agreed to rights and powers as set forth in this Act.

APPROVED: March 1, 1989

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