

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

HOUSE BILL 1352

4 **By: Representatives Davis and Carter**

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For An Act To Be Entitled

8 "AN ACT TO PROVIDE A PROCEDURE FOR THE ELECTION OF MEMBERS
9 OF THE BOARD OF COMMISSIONERS OF SUBURBAN IMPROVEMENT
10 DISTRICTS WITH FEWER THAN THREE THOUSAND (3,000)
11 LANDOWNERS AND GOVERNED UNDER THE LAWS OF ARKANSAS IN
12 EFFECT PRIOR TO THE ENACTMENT OF ACT 510 OF 1981; AND FOR
13 OTHER PURPOSES."

14

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Subtitle

16 "AN ACT TO ENACT A PROCEDURE FOR THE ELECTION OF MEMBERS
17 OF THE BOARD OF COMMISSIONERS OF SUBURBAN IMPROVEMENT
18 DISTRICTS WITH FEWER THAN 3,000 LANDOWNERS."

19

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

21

22 SECTION 1. (a) Any suburban improvement district with fewer than three
23 thousand (3,000) property owners and exempt from the provisions of Act 510 of
24 1981 pursuant to § 14-92-202 may alter the method of selection of members of
25 the board of commissioners of the district pursuant to this act.

26 (b) (1) (A) Prior to filing the petition for altering the selection
27 procedure for commissioners of a district, each owner of realty within the
28 boundaries of the district shall be notified by *first class mail* of the intent
29 to alter the commissioner_s selection procedure.

30 (B) The notice shall be accompanied by:

31 (i) A copy of the petition;

32 (ii) A list of those candidates nominated for
33 commissioner;

34 (iii) Proxy materials for the use of those owners not
35 able to attend the public meeting; and

1 (iv) The name and mailing address of the senior
2 justice of the peace within the area encompassed by the district where the
3 change is proposed.

4 (2) The notice shall indicate the date and location of a public
5 meeting to be held not less than fifteen (15) days nor more than thirty (30)
6 days prior to filing the petitions.

7 (3) The letters of notification shall be mailed not less than
8 fifteen (15) days nor more than thirty (30) days prior to the public hearing.

9 (4) (A) The notice shall also be published in a newspaper having
10 general circulation within the counties where the district is located.

11 (B) The publication shall be once a week for two (2) weeks
12 prior to the public meeting, and the notice shall indicate the date and
13 location of the public hearing.

14 (c) (1) The public hearing shall be held within the boundaries of the
15 district, unless public meeting facilities of sufficient size are not
16 available, in which instance the meeting shall be held in the nearest public
17 facility of sufficient size.

18 (2) The public hearing shall be chaired by the senior justice of
19 the peace within the area encompassed by the suburban improvement district or
20 his designee.

21 (3) The public hearing shall commence between the hours of 6:00
22 p.m. and 9:00 p.m.

23 (4) (A) The purpose of the hearing shall be:

24 (i) To inform the owners of realty in the district of
25 the proposed change to alter the method of selection of members of the board
26 of commissioners of the district, of the methods of selection of
27 commissioners, of how any vacancies on the board would be filled, and the
28 procedures for removing commissioners, and general information; and

29 (ii) The election, by those realty owners in
30 attendance, in person or by proxy given to the senior justice of the peace
31 within the area encompassed by the district, by simple plurality vote with the
32 number of votes for each candidate reported, of three (3) candidates for
33 commissioners, whose names shall be transmitted with the petitions.

34 (5) (A) (i) Each commissioner shall be nominated and elected by
35 position;

1 (ii) Any owner of realty within the proposed district
2 may nominate candidates for commissioner at any time before or during the
3 public meeting;

4 (B) Each commissioner shall own realty within the
5 boundaries of the proposed district.

6 (6) The petitions shall not contain the names of proposed
7 commissioners.

8 (7) On all questions submitted to the realty owners of a
9 district, each owner of realty therein shall be entitled to cast one (1) vote.
10 Provided, under this act, any owner of realty or property owner within the
11 suburban improvement district who is more than two (2) years delinquent in
12 paying his or her district assessments shall not be eligible to vote, in
13 person or by proxy, in any election provided herein or *shall not be considered*
14 *a property owner under the provisions of this act.*

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16 SECTION 2. (a) Upon the petition of twenty-five percent (25%) of the
17 property owners in the district, it shall be the duty of the senior justice of
18 the peace within the area encompassed by the district to certify the petition
19 calling for the change in the method of selecting members of the board of
20 commissioners and to name a new board of commissioners composed of three (3)
21 members who shall be elected at the public meeting held prior to the filing of
22 the petitions. The petition shall be filed with the county clerk and it shall
23 be for the purpose of changing the method of selecting members of the board of
24 commissioners and to implement the election of the commissioners for the
25 board.

26 (b) The petition shall set forth:

27 (1) The name of the district;

28 (2) That there is need, in the interest of the public welfare,
29 for the election of the suburban improvement district_s board of
30 commissioner_s;

31 (3) The name of each signer, printed and signed, the residence
32 address of each signer, and the description of the realty within the district
33 which is owned by the signer, if known;

34 (4) An affidavit, signed by one (1) or more persons, in which the
35 affiant or affiants shall vouch for the eligibility of each signer of the

1 petition;

2 (5) The name of the persons authorized to act in behalf of the
3 signers in prosecuting the petition.

4 (c) Each petition shall be substantially in the following form:

5

6 "The undersigned, duly qualified electors of the Suburban Improvement District
7 No., of County, Arkansas, each signer hereof
8 residing at the address set opposite his signature, hereby requests that
9, Justice of the Peace order, in accordance with and under
10 the authority of the provisions of law, that from hence forth the Board
11 of Commissioners of Suburban Improvement District No., of
12 County, Arkansas shall be elected at a public meeting by a
13 vote of a plurality of the owners of realty in the District commencing
14 on day of, 19..... We further state that we know
15 and are aware that from henceforth every two (2) years a public meeting
16 will be held, candidates for the Board of Commissioners will stand for
17 election or re-election, the cost of such elections will be borne as a
18 cost of administering Suburban Improvement District No., of
19 County, Arkansas, and that the election costs shall be
20 assessed against all the lands within the District as a benefit to the
21 land on a per capita basis. Further, we name
22 and/or..... whose address is,, as our
23 agent to prosecute the adoption of this petition."

24

25 (d) Within twenty (20) days after the filing of the petition, the
26 county clerk shall examine and ascertain its sufficiency of the petition. If
27 the clerk finds the petition insufficient, the clerk shall notify the
28 circulators of the petition, in writing, setting forth in detail every reason
29 for the findings of insufficiency. If the clerk finds the petition
30 sufficient, the clerk shall notify the circulators of the petition and the
31 senior justice of the peace within the area encompassed by the district, in
32 writing, setting forth the findings of sufficiency of the petition.

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34 SECTION 3. (a) After a petition is determined sufficient, the senior
35 justice of the peace within the area encompassed by the district, within (15)

1 calendar days, shall fix and communicate to the agent of the signers of the
2 petition a time and place for the public hearing on the petition, which time
3 shall not be less than thirty (30) days, nor more than sixty (60) days after
4 the filing of the petition. The signers_ agent shall cause a notice to be
5 published in some newspaper of general circulation in the county for not less
6 than two (2) consecutive weeks. The notice shall contain the substance of the
7 petition and state the time and place appointed for the public hearing.

8 (b) On the day named in the notice, it shall be the duty of the senior
9 justice of the peace to convene a public hearing at the county courthouse to
10 hear the petition and to ascertain whether those signing it constitute twenty-
11 five percent (25%) of the number of owners of realty in the district.

12 (c) (1) If the senior justice of the peace determines that twenty-five
13 percent (25%) of the number of owners of realty have petitioned for
14 the improvement, he or she shall enter his or her judgment approving the
15 petition and appoint the commissioners elected at the public hearing held
16 prior to the filing of the petition as the new board of commissioners.

17 (2) If the senior justice of the peace finds that twenty-five
18 percent (25%) of the number of owners of realty have not signed the petition
19 or that the notice or petition are somehow defective, he or she shall enter
20 his or her judgment disapproving the petition and the selection method change
21 shall be denied.

22 (3) The findings of the senior justice of the peace shall be
23 filed with the county clerk and the terms of office of the new board of
24 commissioners shall be effective upon the filing.

25 (d) Any petitioner or any opponent of the petition or any person
26 *aggrieved by the actions of the clerk or the senior justice of the peace* may
27 within fifteen (15) calendar days, but not thereafter, file a petition in
28 chancery court for a review of the findings.

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30 SECTION 4. (a) The new board of commissioners shall replace the
31 previous board of commissioners as soon as new board of commissioners are
32 certified and qualified to take office.

33 (b) The board of commissioners for a suburban improvement district
34 regulated by this act shall consist of three (3) members serving staggered
35 four (4) year terms. The members of the new board shall draw lots to

1 determine the length of the initial terms for each of these initial new
2 members. Two (2) commissioners shall serve an initial two (2) year term and
3 one (1) commissioner shall serve an initial four (4) year term. Thereafter,
4 members of the board of commissioners shall serve four (4) year terms.

5 (c) Vacancies on the board of commissioners shall be filled by a
6 *qualified person from the district wherein the suburban improvement district*
7 *is located to be appointed by the remaining commissioners.*

8 (d) Within thirty (30) days of the end of a commissioner_s term, the
9 senior justice of the peace within the area encompassed by the district shall
10 conduct subsequent elections for the board at a public meeting in the same
11 manner and in accordance with the procedures in Section 1 of this act. The
12 senior justice of the peace shall call a public hearing for the purpose of the
13 election of successor commissioners. He or she shall notify the owners of
14 realty within the district and shall accept nominations and proxies for the
15 election in the manner prescribed by Section 1 of this act. The nominees
16 shall meet the qualifications required of the commissioners originally
17 elected. Upon the vote of a plurality of all votes cast by owners in
18 attendance, in person or by proxy, at the public meeting, the successor
19 commissioners shall be elected from among those nominated. The senior justice
20 of the peace shall then certify the election results and the names of the
21 newly elected member of the board of commissioners to the county clerk. The
22 terms of office of the new commissioners shall be effective upon the filing
23 with the clerk and the person_s qualification as a commissioner.

24 (e) The district shall pay all the expenses of the notices and costs of
25 the elections and may assess a benefit to all lands within the district on a
26 per capita basis to finance these expenses. These assessments shall be
27 assessed and collected in the same manner and under the same laws as all other
28 benefits assessed to land within the district.

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30 SECTION 5. Commissioners of suburban improvement districts selecting
31 members of the board of commissioners in accordance with this act may be
32 removed from office as follows:

33 (1) The owners of realty within the district may petition the
34 senior justice of the peace to call a public hearing for the purpose of the
35 removal of the commissioners named in the petition and the election of

1 successors.

2 (2) Upon determining that at least twenty-five percent (25%) of
3 the number of owners of realty within the proposed district have signed the
4 recall petition, the senior justice of the peace shall call a public hearing
5 on the matter and shall notify the owners of realty within the district in the
6 manner prescribed in Section 1 for the initial public meeting prior to filing
7 a petition.

8 (3) Upon the affirmative vote of a majority, but not less than
9 twenty-five percent (25%) of all votes entitled to be cast, of all votes cast
10 by owners in attendance, in person or by proxy, at the public meeting as
11 recorded through the number voting "yea" and the number voting "nay," the
12 commissioners named in the recall petitions may be removed.

13 (4) The senior justice of the peace shall at the meeting declare
14 the commissioners removed and accept nominations for successor commissioners.

15 (5) The successor commissioners shall be nominated by a realty
16 owner in attendance, in person or by proxy, at the public hearing. The
17 nominees shall meet the qualifications required of the commissioners
18 originally elected.

19 (6) Successor commissioners shall be elected from among those so
20 nominated, at a subsequent public meeting called and held by the senior
21 justice of the peace in accordance with the provisions of Section 1 of this
22 act.

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24 SECTION 6. The provisions of this act shall apply to any suburban
25 improvement district in Arkansas with fewer than three thousand (3,000)
26 property owners, exempt from the provisions of Act 510 of 1981, pursuant to §
27 14-92-202, and continuing to be governed by the law in effect immediately
28 prior to the effective date of Act 510 of 1981. It is not intended in anyway
29 to affect the suburban improvement districts formed after March 16, 1981 and
30 administered and operated under Arkansas Code §§ 14-92-201 et seq.

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32 SECTION 7. All provisions of this act of general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

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1 SECTION 8. If any provisions of this act or the application thereof to
2 any person or circumstance is held invalid, the invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provisions or application, and to this end the provisions of this
5 act are declared to be severable.

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7 SECTION 9. All laws and parts of laws in conflict with this act are
8 hereby repealed.

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/s/Michael Davis, et al

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