

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 138

5 By: Senator Hickey
6 By: Representative Hillman
7

For An Act To Be Entitled

9 AN ACT TO CREATE A PROCEDURE FOR THE REVOCATION OF A
10 CHARTER OF A MUNICIPAL CORPORATION AS A RESULT OF THE
11 MUNICIPAL CORPORATION'S NONCOMPLIANCE WITH THE LAW;
12 AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO CREATE A PROCEDURE FOR THE REVOCATION
16 OF A CHARTER OF A MUNICIPAL CORPORATION
17 AS A RESULT OF THE MUNICIPAL
18 CORPORATION'S NONCOMPLIANCE WITH THE LAW.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

26 (vi) ~~Any~~ A city, town, village, borough, township,
27 or other municipality or a receiver of a city, town, village, borough,
28 township, or municipality.
29

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

33 (b) This chapter expresses the consent of the state for the
34 institution of bankruptcy proceedings by ~~any and~~ all such taxing agencies
35 acting through their governing boards or through a receiver under § 14-74-
36 102(D)(vi).



1
 2 SECTION 3. Arkansas Code Title 14 is amended to add an additional
 3 chapter to read as follows:

4
 5 CHAPTER 62

6 REVOCATION OF CHARTER OF A MUNICIPAL CORPORATION

7
 8 14-62-101. Authority generally.

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

14
 15 14-62-102. Revocation due to noncompliance.

16 (a)(1) If the Legislative Joint Auditing Committee determines that a
 17 municipal corporation has had two (2) or more findings of noncompliance with
 18 § 14-59-117 in the immediately preceding three-year period, the Legislative
 19 Joint Auditing Committee may present the findings to the Attorney General.

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

23 (b) When the circuit court of the Sixth Judicial Circuit revokes the
 24 charter of a municipal corporation under this section, the clerk of the
 25 circuit court shall certify a transcript of the order under the official seal
 26 of the clerk and forward a copy of the transcript to the:

- 27 (1) Secretary of State;
- 28 (2) Arkansas Geographic Information Systems Office;
- 29 (3) Governor; and
- 30 (4) County judge of the county in which the municipal
 31 corporation is located.

32
 33 14-62-103. Surrender and repeal of charter.

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

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

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

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

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

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

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

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

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

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

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

27 (b) Until a final order of dissolution is entered under § 14-62-111,
28 the receiver appointed under § 14-62-104 shall continue to collect the share
29 of:

30 (1) General revenue turnback funds, as defined in the Revenue
31 Stabilization Law, § 19-5-101 et seq., that the municipal corporation is
32 entitled to under § 27-70-207; and

33 (2) County and state taxes that were being paid to the municipal
34 corporation.

35 (c) If a public utility is transferred under § 14-62-108(d)(1), the
36 county in which the municipal corporation is located shall continue to

1 collect pledged or dedicated taxes levied for bonded indebtedness of the
 2 public utility until the indebtedness is satisfied.

3
 4 14-62-104. Receiver – Appointment – Oath – Duties – Authority.

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

9 (b) A receiver shall:

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

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

15 (3) Take possession of:

16 (A) All books, papers, and documents pertaining to the
 17 assessment and collection of taxes; and

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

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

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

25 (2) Removal may be upon:

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

27 (B) The motion of:

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

30 (ii) A creditor of the extinct municipal
 31 corporation;

32 (iii) The county judge of the county in which the
 33 extinct municipal corporation was located; or

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

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

1 (4) The office of the receiver shall cease and terminate at the
2 time a final order of dissolution is entered under § 14-62-111.

3 (d) The receiver may:

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

7 (2) Sue or be sued;

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

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

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

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

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

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

26
27 14-62-105. Reports and collections by receiver.

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

33 (b)(1)(A) At the end of each month, the receiver shall pay into the
34 State Treasury the whole sum collected or received from taxes.

35 (B) The receiver shall distinguish the respective sources
36 from which the moneys paid in are derived, reflecting what is collected from

1 taxes for general purposes and what is collected for special purposes, and
2 designating the general or special purpose, so that the moneys may be kept
3 separate in the State Treasury in order that the Treasurer of State may pay
4 the moneys according to any lien that may be declared by any court touching
5 any of the funds in favor of any creditor or class of creditors.

6 (2)(A) At the end of each month, the receiver shall pay into a
7 bank approved under § 19-8-105 the whole sum collected and received from any
8 nontax revenue sources.

9 (B) The receiver shall distinguish the respective sources
10 from which the moneys paid in are derived, so that the moneys may be kept
11 separate in the bank under subdivision (b)(2)(A) of this section in order
12 that the moneys may be paid according to any lien that may be declared by any
13 court touching any of the funds in favor of any creditor or class of
14 creditors.

15 (c) As the circuit court may allow, a receiver shall have credit for
16 all taxes, expenses, attorney’s fees, and other necessary disbursements in
17 the execution of the receiver’s duties, and such reasonable and proper
18 compensation for the receiver’s own services, to be paid out of the funds
19 collected by the receiver.

20
21 14-62-106. Compensation of receiver.

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

25 (b) If insufficient funds have been collected under this chapter to
26 compensate the receiver, the circuit court may order the Governor to transfer
27 adequate funds to compensate the receiver from the Long Term Reserve Fund
28 under § 19-6-486.

29
30 14-62-107. Audit of receiver.

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

33 (1) At the request of the:

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

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

1 (2) At the discretion of the Legislative Auditor.

2
3 14-62-108. Proceedings to collect revenue due.

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

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

10 (b) All pending lawsuits involving the extinct municipal corporation
11 in connection with the collection of taxes or the payment of indebtedness are
12 revived in the name of the receiver and consolidated with the proceedings
13 provided for in this section.

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

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

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

25 (2) The circuit court shall include in the proceedings only
26 those taxpayers of the extinct municipal corporation so that no other
27 citizens of the county shall be responsible for the payment of taxes owed to
28 or the debts of the extinct municipal corporation, except as provided under §
29 14-62-103(c) or for other pledged or dedicated sales and use taxes of the
30 extinct municipal corporation.

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

34 (d)(1)(A)(i) Any public utilities operated by the extinct municipal
35 corporation are transferred to the county in which the extinct municipal
36 corporation was situated.

1 appointed under § 14-62-104 and countersigned by the judge of the circuit
2 court.

3
4 14-62-111. Final order of dissolution.

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

9
10 SECTION 4. Arkansas Code § 19-8-101(b), concerning definitions, is
11 amended to read as follows:

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

15
16 SECTION 5. Arkansas Code § 19-8-102 is amended to read as follows:
17 19-8-102. Legal funds.

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

23
24 SECTION 6. Arkansas Code § 19-8-106, concerning depository boards, is
25 amended to add an additional subsection to read as follows:

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

29
30 SECTION 7. Arkansas Code § 19-8-202, concerning the definition of
31 "public funds", is amended to add an additional subdivision to read as
32 follows:

33 (6) A receiver appointed under § 14-62-104.
34
35
36