

INTERIM STUDY PROPOSAL 2019-040

1
2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

A Bill

SENATE BILL 510

5
6 By: Senator B. Ballinger
7 By: Representative Breaux

8 Filed with: Senate Committee on City, County, and Local Affairs
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

16 TO AMEND THE LAW CONCERNING SUBURBAN
17 IMPROVEMENT DISTRICTS.

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

21
22 SECTION 1. Arkansas Code § 14-92-201, concerning definitions, is
23 amended to add an additional subdivision to read as follows:

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

27
28 SECTION 2. Arkansas Code § 14-92-219 is amended to read as follows:
29 14-92-219. Purposes for which district organized or expanded.

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

33 (1) To purchase, accept as a gift, or construct a waterworks
34 system or betterments, improvements, and extensions to such waterworks
35 system, either within or without the boundaries of the district, if the

1 property of the district will benefit and to operate and maintain any such
2 waterworks system it may purchase, construct, or own;

3 (2) To purchase, accept as a gift, or construct, either within
4 or without the boundaries of the district, if the property of the district
5 will benefit, a sewage collection system or a sewage treatment plant or
6 intercepting sewers, outfall sewers, force mains, pumping stations, ejector
7 stations, and all other appurtenances necessary or useful and convenient for
8 the collection or treatment, purification, and disposal, in a sanitary
9 manner, of the liquid and solid waste, sewage, night soil, and industrial
10 waste of the area within the boundaries of the district or adjacent thereto,
11 and to operate and maintain any such sewage system and facilities;

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

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

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

29 (5) To lay and maintain sidewalks;

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

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

35 (ii) Any such gas system shall be subject to the
36 jurisdiction of the Pipeline Safety Division of the Arkansas Public Service

1 Commission and shall be subject to all provisions of the Arkansas Gas
2 Pipeline Code;

3 (7) To build telephone lines to connect with the telephone
4 systems operating in nearby or adjacent municipalities;

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

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

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

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

20 (B)~~(i)~~ The governing body of the district may enter into
21 an agreement with one (1) or more municipalities, counties, county solid
22 waste authorities, regional solid waste management districts, private
23 persons, private trusts, or any combination thereof, to provide a solid waste
24 management system or any part of a system for the district;
25

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

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

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

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

36 SECTION 3. Arkansas Code § 14-92-220 is amended to read as follows:

1 14-92-220. Powers of districts generally.

2 (a)(1) Any district, in aid to and furtherance of the purposes
3 prescribed in § 14-92-219, ~~shall have the authority to~~ may hire managers and
4 other employees and ~~to~~ pay their salaries incident to the operation and
5 maintenance of any of the improvements and facilities authorized in this
6 subchapter.

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

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

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

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

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

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

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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

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

4
5 SECTION 8. Arkansas Code § 14-92-236 is amended to read as follows:
6 14-92-236. Public contributions to ~~road or street improvement~~
7 districts.

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

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

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

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

26
27 SECTION 9. Arkansas Code § 14-92-239 is amended to read as follows:
28 14-92-239. Continued existence of district.

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

34 **(b)** To this end, the board of commissioners may, ~~from time to time,~~
35 make ~~such~~ additional levies based upon the assessment of benefits as ~~may be~~

1 necessary for these purposes. However, the amount of the total levies shall
2 not exceed the assessed benefits and interest thereon.

3
4 SECTION 10. Arkansas Code § 14-92-240 is amended to read as follows:

5 14-92-240. Districts of less than six thousand lots – Alteration of
6 number of and method of selecting commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (D) The notice shall include the following information:

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

24 (ii) How to request an absentee ballot; and

25 (iii) The qualifications for voting in the election.

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

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

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

35 (iii) If a property is owned by a
36 corporation, trust, or other legal entity, the vote is limited to

1 two (2) votes to be cast by individuals designated by the entity
 2 in writing by a properly authorized officer of the entity.

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

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

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

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

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

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

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

24 (i) Meeting format;

25 (ii) Voting and tabulation procedures;

26 (iii) Absentee ballot process; and

27 (iv) Other matters necessary to ensure integrity.

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

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

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

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

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

5 (2) The terms of office of initial members shall be determined
6 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (d) If it is the responsibility of the eligible district to collect
10 delinquent taxes, the district shall add to the amount of the tax a penalty
11 of twenty-five percent (25%) and shall enforce collection by civil
12 proceedings in the circuit court of the county and in the manner provided by
13 ~~§§ 14-121-426 — 14-121-432~~ under § 14-92-604.

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

17 14-92-604. Payment of taxes – Enforcement.

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

20 (b) Delinquencies.

21 (1) If any taxes levied by the board of commissioners of a
22 suburban improvement district under this chapter are not paid at maturity,
23 the board shall add to the amount of the tax a penalty of twenty-five percent
24 (25%).

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

27 (B) The court shall give judgment against the lands for
28 the amount of the delinquent taxes, and the penalty of twenty-five percent
29 (25%) and interest, from the end of the sixty (60) days allowed for the
30 collection at the rate of six percent (6%) per annum, and all costs of the
31 proceedings.

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

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

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

5 (2) In case the board shall fail to commence suit within sixty
6 (60) days after the taxes become delinquent, the holder of any bond issued by
7 the district or any trustee on behalf of the holder of any bond issued by the
8 district shall have the right to bring suit for the collection of the
9 delinquent assessments, and the proceedings in the suit brought by the
10 bondholder or trustee shall in all respects be governed by the provisions
11 applicable to suits by the commissioners.

12 (e) Trial Procedure.

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

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

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

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

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

31 (f) Sale of Land.

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

35 (B)(i) The court shall direct the commissioner to sell the
36 lands described in the complaint at the courthouse door of the county in

1 which the decree is entered, at public auction to the highest and best bidder
2 with cash in hand, after having first advertised the sale weekly for two (2)
3 consecutive weeks in a newspaper having a general circulation in the county.

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

6 (2) If all the lands are not sold on the day as advertised, the
7 sale shall continue from day to day until completed.

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

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

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

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

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

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

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

34 (2) The obligation to pay all future taxes shall also extend to
35 any purchaser of lands who purchases such lands from the district following

1 the district's obtaining of the land pursuant to subsection (g) of this
2 section.

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

7 (j) Redemption.

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

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

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20 Referred requested by the Arkansas Senate

21 Prepared by: KLC/VJF

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