

As Engrossed: 3/23/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 813 OF 1995
HOUSE BILL 1695

4 **By: Representatives Jones and M. Wilson**

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For An Act To Be Entitled

8 "AN ACT TO AMEND THE INTERLOCAL COOPERATION ACT TO
9 AUTHORIZE PUBLIC AGENCIES TO CREATE PUBLIC BODIES
10 CORPORATE AND POLITIC AS A LEGAL ENTITY FOR JOINT
11 COOPERATIVE ACTION; AND FOR OTHER PURPOSES."

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Subtitle

14 "AN ACT TO AUTHORIZE PUBLIC AGENCIES TO
15 CREATE PUBLIC BODIES CORPORATE AND
16 POLITIC FOR JOINT COOPERATIVE ACTION."

17

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

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20 SECTION 1. Arkansas Code 25-20-104 is hereby amended by adding thereto
21 a new subsection (i) to read as follows:

22 "(i) In addition to the legal or administrative entities which may
23 otherwise be legally created under Arkansas statutes, public agencies may
24 create a separate legal entity in the form of a public body corporate and
25 *politic pursuant to § 25-2-201 et seq. for the purpose of constructing,*
26 *operating and maintaining a public library system."*

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28 SECTION 2. Title 25, Chapter 20 of the Arkansas Code Annotated is
29 hereby amended by inserting a new subchapter 2 to read as follows:

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31

"SUBCHAPTER 2

32

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PUBLIC BODIES CORPORATE AND POLITIC

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25-20-201. Creation.

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(a) Any two (2) or more public agencies are hereby authorized to create

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1 a public body corporate and politic as a separate legal entity for the purpose
2 of constructing, operating and maintaining a public library system.

3 (b) The governing body of each public agency wishing to form a public
4 body corporate and politic shall, by ordinance, resolution or otherwise
5 pursuant to law of the governing body of each participating public agency:

6 (1) determine that it is in the best interest of the public
7 agency in accomplishing the purposes of this subchapter to create a public
8 body;

9 (2) set forth the names of the public agencies which are proposed
10 to form the public body;

11 (3) specify any limitations on the exercise of the public body_s
12 powers;

13 (4) specify the number of directors of the public body, the
14 number of directors required from each public agency and the voting rights of
15 each director, which number and voting rights may vary by agency and director;
16 and

17 (5) approve the filing of an application with the Secretary of
18 State to create the public body corporate and politic.

19 (c) An application to create a public body corporate and politic shall
20 then be prepared, setting forth a request that a public body corporate and
21 politic be created under this subchapter, the proposed name for the public
22 body, the names of the participating public agencies, any limitations on the
23 exercise of the public body_s powers, the number of directors of the public
24 body, and the number of directors required from each public agency and the
25 voting rights of each director. The application shall be deemed signed and
26 approved by each public agency by attaching thereto a certified copy of the
27 ordinance, resolution or other action of each participating public agency.

28 (d) (1) The Secretary of State shall examine the application and, if the
29 Secretary of State finds that the name proposed for the public body is not
30 identical with that of any other corporation, agency or instrumentality of
31 this State, so nearly similar as to lead to confusion and uncertainty, or
32 otherwise deceptively misleading, the Secretary shall receive and file the
33 application, record it in an appropriate book of record in his/her office,
34 make and issue a certificate of incorporation under the seal of the State
35 setting forth the names of the participating public agencies, and record the

1 certificate in an appropriate book of record in his/her office.

2 (2) A copy of the certificate of incorporation, certified by the
3 Secretary of State, shall be admissible in evidence in any suit, action, or
4 proceeding involving the validity or enforcement of, or relating to, any
5 contract of the public body, and shall be conclusive proof of the filing and
6 contents of the certificate, and the effective creation of the public body
7 corporate and politic, absent fraud in the premises being established.

8 (e)(1) Any application filed with the Secretary of State pursuant to
9 the provisions of this subchapter may be amended from time to time with the
10 unanimous consent of the directors of the public body corporate and politic
11 who are entitled to vote.

12 (2) The amendment shall be signed and filed with the Secretary of
13 State in the manner provided in this section, whereupon the Secretary of State
14 shall make and issue an amendment to the certificate of incorporation.

15 25-20-202. Board of directors -- Executive director.

16 (a)(1) Each public body corporate and politic shall be administered and
17 governed by a board of directors, with each director residing within the
18 jurisdiction of the public agency which he or she represents. Each director
19 shall be appointed by the governing body of the public agency which he or she
20 represents, with all vacancies being likewise filled within 45 days.

21 (2) The directors shall receive no compensation for their
22 services, but shall be entitled to reimbursement of expenses incurred in the
23 performance of their duties. No director may serve more than six (6)
24 consecutive years.

25 (3) Before entering upon their duties, the directors shall take
26 and subscribe to an oath of office swearing to discharge faithfully their
27 duties in the manner provided by law.

28 (b) The board of directors shall appoint a paid executive director, who
29 shall be in charge of the daily operations of the public body and shall be
30 responsible for submitting a budget to the board of directors for approval and
31 the hiring, dismissal and compensation of other staff. The board of directors
32 shall have final approval of all budgets.

33 25-2-203. Powers.

34 (a) Unless its application provides otherwise, each public body shall
35 have the power to have perpetual succession; maintain such office(s) as it may

1 deem appropriate; execute and perform contracts; apply for and receive
2 permits, licenses, certificates, and approvals as may be necessary, and
3 construct, maintain, and operate facilities in accordance therewith; employ
4 the services of professionals; purchase insurance; purchase, receive, own,
5 hold, improve, use, lease, sell, convey, exchange, transfer, assign, mortgage,
6 pledge, or otherwise acquire, dispose of, or deal with, real or personal
7 property or any legal or equitable interest therein in its own name; apply
8 for, receive, and use loans, grants, taxes, donations, and contributions from
9 any public agency or other lawful source, including any taxes levied pursuant
10 to any authority granted by the Arkansas Constitution or statutes, and
11 amendments thereto, and any proceeds from the sale of bonds; acquire by the
12 exercise of the power of eminent domain any real property which it may deem
13 necessary for its purposes, in the manner prescribed in Arkansas Code 18-15-
14 1202-1207 or in the manner provided by any other statutory provisions for the
15 exercise of the power of eminent domain; and do any and all other acts and
16 things necessary, convenient, or desirable to carry out the purposes and to
17 exercise the powers granted to the public body by this chapter.

18 (b) A public body corporate and politic hereby created shall constitute
19 an independent legal entity, and notwithstanding any other provision of State
20 law, or ordinance, resolution or other action of any participating public
21 agency to the contrary, none of the powers granted to a public body under the
22 provisions of this subchapter or in its application for incorporation shall be
23 subject to the further supervision or regulation, or require the further
24 approval or consent of, any participating public agency.

25 25-20-204. Tax exempt status of property and income.

26 Each public body corporate and politic created pursuant to this
27 subchapter will be performing functions and will be a public instrumentality
28 of the participating public agencies. Accordingly, all properties at any time
29 owned by the public body and the income therefrom shall be exempt from all
30 taxation in the State.

31 25-20-205. Immunity.

32 This subchapter does not abrogate, or in any other manner affect, the
33 immunity of the participating public agencies, and such immunity extends also
34 to any public body corporate and politic created pursuant to this subchapter,
35 and to each director thereof.

1 25-20-206. Construction.

2 This subchapter shall be liberally construed to accomplish its intent
3 and purposes and shall be the sole authority required for the accomplishment
4 of its purposes; to this end it shall not be necessary to comply with the
5 general provisions of other laws dealing with public facilities, their
6 acquisition, construction, equipping, maintenance, operation, leasing,
7 encumbering, or disposition.

8 25-20-207. Withdrawal.

9 If any public agency participating in a public body corporate and
10 politic wishes to withdraw therefrom, the governing body of that public agency
11 shall, by ordinance, resolution or otherwise pursuant to law of the governing
12 body, determine that it is in the best interest of the public agency to
13 withdraw from the public body, and give notice thereof to all directors of the
14 public body and to the mayor, county judge, president, chairman, or other
15 chief executive of the governing body of each of the other public agencies,
16 and each such governing body shall have ninety (90) days in which to
17 determine, by ordinance, resolution or otherwise pursuant to law of the
18 governing body, whether to dissolve the public body or continue without the
19 withdrawing public agency. The notice of withdrawal shall become effective
20 upon the earlier of the date each public agency participating in the public
21 body makes its determination as aforesaid, or the expiration of ninety (90)
22 days."

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24 SECTION 3. All provisions of this act of a general and permanent nature
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
26 Revision Commission shall incorporate the same in the Code.

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28 SECTION 4. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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34 SECTION 5. All laws and parts of laws in conflict with this act are
35 hereby repealed.

As Engrossed: 3/23/95

HB 1695

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/s/Rep. Jones, et al

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APPROVED: 3-28-95

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