

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

Act 329 of 1999
SENATE BILL 275

5 By: Senator Roebuck
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND TITLE 14, CHAPTER 121, REGARDING
10 DRAINAGE IMPROVEMENT DISTRICTS, TO ADD A NEW
11 SUBCHAPTER 11 TO ALLOW DRAINAGE DISTRICTS TO MERGE
12 WITH OTHER DISTRICTS TO SIMPLIFY THE ADMINISTRATION
13 AND OPERATIONS OF THE DISTRICT; AND FOR OTHER
14 PURPOSES. "

Subtitle

15
16 "TO AMEND ARKANSAS LAW TO ALLOW DRAINAGE
17 DISTRICTS TO MERGE IN ORDER TO SIMPLIFY
18 ADMINISTRATION AND OPERATIONS. "
19
20
21

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

24 SECTION 1. Title 14, Chapter 121 of the Arkansas Code of 1987, Annotated,
25 regarding drainage improvement districts, is amended to add a new Subchapter
26 11 to read as follows:
27

28 "14-121-1101. Legislative determination.

29 It is found and declared as a matter of legislative determination that
30 the organization and administration of those drainage districts authorized
31 under Chapter 121 of this title, as amended, as separate and distinct entities
32 and the operation and maintenance of the drainage levees and projects for
33 which the districts were originally created places an undue burden on the
34 districts, causes an unnecessary duplication of work, and increases the cost
35 of construction, operation, and maintenance of the districts and their
36 facilities. Further, the organization and administration of those drainage

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1 districts authorized under Chapter 121 of this title, as amended, as separate
 2 and distinct entities, and the operation and maintenance of the drainage
 3 levees and projects for which the districts were originally created, can be
 4 greatly benefited by the merger of drainage districts with other similar
 5 drainage districts, levees and drainage projects and merger will create
 6 economies of scale to achieve a significant savings in administrative and
 7 operational costs.

8
 9 14-121-1102. Definitions.

10 As used in this subchapter, unless the context otherwise requires:

11 (1) "Drainage district" includes any drainage districts organized
 12 under Acts 1909, No. 279, codified as §§ 14-121-101, 14-121-102, 14-121-104,
 13 14-121-105, 14-121-201 - 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-
 14 121-305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 - 14-121-
 15 406, 14-121-408, 14-121-411, 14-121-412, 14-121-422 - 14-121-432, 14-121-440 -
 16 14-121-442, 14-121-802 - 14-121-805, and 14-121-808, and any drainage
 17 districts organized under other acts which have reorganized under Acts 1909,
 18 No. 279 as provided for by § 14-121-207.

19 (2) In cases where the drainage district contains lands in more
 20 than one (1) county, "county court" or "county judge" and the "county clerk"
 21 shall be construed to mean "circuit court" or "circuit judge" and "circuit
 22 clerk", respectively, of the judicial circuit containing the majority in
 23 assessed value of the lands of the merged district.

24
 25 14-121-1103. Subchapter cumulative.

26 This subchapter shall be construed to be cumulative to existing laws
 27 relating to drainage districts and shall not repeal any existing law unless
 28 the law is in direct conflict herewith. It is the purpose of this subchapter
 29 to permit the merger by one or more drainage districts of the duties,
 30 obligations and purposes for which the districts were originally created under
 31 the provisions of Chapter 121 of this title and amendments thereto.

32
 33 14-121-1104. Authority to merge.

34 (a) Any drainage district may merge all its required duties,
 35 obligations, and purposes whereby it carries out drainage projects with the
 36 duties, obligations, and purposes required of any other drainage district if

1 it follows the terms and procedures of this subchapter in order to merge with
2 the other drainage district.

3 (b) In order to effect the merger, the drainage district:

4 (1) May combine into one (1) operation the organization and
5 administration of the drainage districts and the operation and maintenance of
6 the drainage levees and projects for which the districts were originally
7 created;

8 (2) May levy and collect one (1) assessment for construction,
9 operation, and maintenance of any and all operations and projects coming under
10 the management and control of various districts prior to the merger and
11 operations commenced by the district subsequent to merger;

12 (3) May use the funds arising from the assessments so levied for
13 the payment of any obligation incurred in the construction, operation, or
14 maintenance of any operation or project merged; and

15 (4) May cause an assessment of benefits to be made of the benefits
16 arising from the merged construction, operation, and maintenance for which the
17 districts were originally created and for those arising from the merged
18 district.

19
20 14-121-1105. Merger procedure.

21 (a) No drainage district coming within the provision of this subchapter
22 shall exercise any of their powers conferred by this subchapter or merge the
23 operation and maintenance of a levee or project for which the district was
24 originally created with those of another drainage district's operations or
25 maintenance, until:

26 (1) The board of directors of each merging district shall have
27 determined by a proper resolution, adopted by two-thirds (2/3) of the members
28 of the board of directors of the district, that the merger would be to the
29 best interest of the district and of the landowners;

30 (2) A special meeting of the landowners and bondholders of the
31 district shall have been held at which the question of merger shall have been
32 presented and for the purpose of hearing support for or objections to the
33 merger.

34 (b) Notice of the hearing shall be given by the secretary of the
35 district by publication of a notice for at least two (2) consecutive weekly
36 insertions in a newspaper published and having a bona fide circulation in each

1 county within the district. This notice shall state:

2 (1) The time and place at which the board of directors shall meet
 3 for the purpose of hearing support for or objections to the merger;

4 (2) That the meeting shall be open to the public; and

5 (3) That at such meeting any landowner or bondholder of the
 6 district may offer support for or objection to the action of the board in
 7 adopting the resolution.

8 (c)(1) At the time and place specified in the notice, the board of
 9 directors shall meet at the office of the district for the purpose of the
 10 hearing.

11 (2) The district shall furnish a stenographer who shall take and
 12 transcribe all the testimony introduced before the board.

13 (3) The board shall keep a true and perfect record of its
 14 proceedings at the meeting which shall be filed as a public record in the
 15 office of the district.

16 (4) A copy of the record, certified by the secretary of the
 17 district, shall be competent evidence in all courts of this state.

18 (5) After consideration of all comments in support of or in
 19 objection to the merger, if any, the board of directors, by proper resolution
 20 duly adopted by two-thirds (2/3) of the members of the board of directors,
 21 shall declare its decision regarding the merger of the district.

22 (6) Any landowner or bondholder aggrieved by the decision of the
 23 board may have the findings reviewed by the circuit court of the county in
 24 which the district has its domicile.

25 (7) The appeal shall be perfected in thirty (30) days.

26 (8) The review shall be heard by the court on the evidence
 27 introduced before the board of directors at the meeting aforesaid, and no
 28 additional or different evidence shall be admissible.

29 (9) Appeals to the Supreme Court from the decision of the circuit
 30 court shall be perfected in thirty (30) days.

31
 32 14-121-1106. Board of directors for merged districts.

33 (a) Upon the merger becoming effective, the new board of directors of
 34 the merged drainage district shall consist of one (1) member from each of the
 35 merging district's boards of directors to be selected by each board and named
 36 in its resolution of merger, but in no event shall a new board of directors

1 consist of less than three (3) members. In the event only two (2) districts
2 have merged, the merging district with the majority of value of real property
3 within the merged district shall be entitled to name two (2) members to the
4 board.

5 (b) Each of these members of the board shall take the oath of office
6 required by Arkansas Constitution, Article 19, Section 20, and shall also
7 swear that he will not directly or indirectly be interested in any contract
8 made by the board and that he will well and truly assess all benefits
9 resulting from the improvement and all damages caused thereby.

10 (c) Any member failing to take the oath within thirty (30) days after
11 his appointment shall be deemed to have declined, and his place shall be
12 filled by the county judge.

13 (d) All vacancies on the board shall be filled by the county judge; but
14 if a majority in value of the owners of real property in the merged district
15 shall petition for the appointment of particular persons as a member of the
16 board, it shall be the duty of the county judge to appoint the persons so
17 designated.

18 (e) The county judge shall remove any member of the board on the
19 petition of a majority in value of the owners of real property in the
20 district. He may remove any member and appoint his successor upon proof of
21 incompetency or neglect of duty, but the charges shall be in writing, and the
22 charged member shall have the right to be heard in his defense and to appeal
23 to the circuit court.

24 (f) The board of directors provided for in this subchapter shall
25 receive as compensation the sum of twenty-five dollars (\$25.00) each day for
26 attending meetings of the board, together with their necessary expenses.

27 (g) Actions by the board of directors of any merged district affected
28 by this section shall be a majority vote of the membership of the board.

29
30 14-121-1107. Powers of board of directors.

31 (a) In order to discharge the obligations for which the district was
32 originally created and those which it assumed under the terms of this
33 subchapter, the board of directors of any merged drainage district under this
34 subchapter is authorized and empowered:

35 (1) To exercise any and all the powers and duties of boards of
36 directors of drainage districts as found under Subchapter 3 of Title 14,

1 Chapter 121, including, but not limited to, the authority to improve or extend
2 district boundaries, to borrow money and issue bonds, the authority to secure
3 federal aid for surveys of drainage projects, cooperate with the United States
4 on drainage projects, and to employ attorneys for the district;

5 (2) To carry on district operations as found under Subchapter 4
6 of Title 14, Chapter 121, including, but not limited to, formulating plans for
7 improvements, making assessment of benefits and damages within the district,
8 reassessing benefits, taking appeals, altering plans for improvements,
9 collecting taxes, and issuing bonds;

10 (3) To exercise any and all of the functions of other drainage
11 districts under authority of Subchapters 5 through 10 of Title 14, Chapter
12 121;

13 (4) To enter upon, take, and hold any lands, or interests or
14 servitudes therein, whether by purchase, grant, donation, devise, or otherwise
15 that may be deemed necessary and proper for the location, construction,
16 operation, repair, or maintenance of any levee, levee foundation, channel
17 rectification, floodway, reservoir, spillway, diversion, drainage canal, or
18 other drainage works contemplated to be constructed and thereafter to be
19 perpetually operated and maintained by the district;

20 (5) To take, hold, and acquire flowage and storage rights and
21 servitudes upon, over, and across any land which may be necessary and incident
22 to the construction, operation, repair, and maintenance of any necessary
23 levee, levee foundation, channel rectification, floodway, reservoir, spillway,
24 diversion, drainage canal, or other drainage works; and

25 (6) To perform maintenance services on its merged drainage system
26 for the purpose of preserving the system, of keeping the ditches clear from
27 obstruction, and of extending, widening, or deepening the ditches from time to
28 time as may be found advantageous to the merged district, and to this end, the
29 board of directors, from time to time, may levy a uniform maintenance service
30 charge on all lands and landowners in the merged district at a flat rate per
31 acre for the maintenance services.

32 (b) In order that the rights, easements, and servitudes conferred may
33 be acquired, the board of directors of the district is given authority and
34 power to condemn lands or interests therein for such purposes and the
35 authority and power to exercise rights of eminent domain. Condemnation
36 proceedings therefor shall be instituted and conducted in the manner as is now

1 provided in §§ 18-15-1001 - 18-15-1010 and provided further damages shall be
2 paid for any easement or flowage right or increased use or servitude on any
3 lands by reason of increasing the amount or depth of water on those lands
4 regardless of whether the lands are protected or unprotected by levees, and
5 those damages shall be in addition to damages set out in §§ 18-15-1001 - 18-
6 15-1010. Any action for taking of property or damaging property as provided in
7 this subchapter or in §§ 18-15-1001 - 18-15-1010 shall be commenced within
8 five (5) years from the time the cause of action accrues.

9
10 14-121-1108. Merger and use of assets - Prior liabilities and obligations.

11 (a) Any drainage district which shall merge the duties, obligations,
12 and purposes for which it was originally created with those of another
13 district under the provisions of this subchapter shall merge all assets held
14 by it and arising from any projects and shall also assume all liabilities of
15 the district whether created for purposes for which the district was
16 originally created or those assumed by it under the provisions of this
17 subchapter.

18 (b) The assets may be used by the merged district for any and all
19 purposes now or hereafter authorized by law, and the liabilities of the merged
20 district may be paid with funds arising from any source. Provided, however,
21 if at the time of the merger, a merging drainage district has remaining cash
22 balances which were dedicated to specific projects that remain uncompleted at
23 the time of the merger, then those balances shall be spent only on the
24 specific uncompleted projects or if the district has made assessments which
25 were dedicated for the construction of a specific project or improvement, then
26 those assessments shall be used only on the specific projects within the
27 boundaries of the former drainage district from which the assessments were
28 made.

29 (c) All the provisions, rights, security, pledges, covenants, and
30 limitations contained in the instrument creating the liability shall not be
31 affected by the merger, but shall apply with the same force and effect as
32 provided in the original creation of the liability.

33 (d) All bonds or notes heretofore issued by the drainage district shall
34 not be affected by this merger, but they shall bear the same rate of interest
35 as now provided and shall be due and payable at the time and place provided in
36 the original issue of the bonds or notes.

1
2 14-121-1109. Valid indebtedness unimpaired.

3 No merger of a district under the terms of this subchapter shall impair
4 or deny any creditor of the merging districts the right to the collection of
5 its bona fide and valid indebtedness existing against the districts, but the
6 creditors of the districts shall be subject to the provisions of this
7 subchapter in connection with the presentation, allowance, or other
8 adjudication with reference to their claim.

9
10 14-121-1110. Claims against district.

11 (a) All claims against the district existing at the time of the merger
12 of the district shall be presented to the board of directors duly itemized and
13 verified as is required in actions of account. If not presented to the board
14 of directors of the district within six (6) months from the date of the
15 effectiveness of the merger, claims shall forever be barred.

16 (b) Within ten (10) days from the allowance or disallowance of any
17 claim presented, the claim shall be filed by the board in the county court
18 with an endorsement thereon as their allowance or disallowance of the same,
19 and within thirty (30) days from the filing of the claim or account in the
20 county court, the county court shall make its order either approving,
21 rejecting, or modifying the actions of the board with reference to any such
22 indebtedness. Within the time allowed by law for appeal from orders of the
23 county court, either the district or any landowner therein or any party
24 claiming to be a creditor of the district may either appeal from the order of
25 the county court to the circuit court or any creditor may institute an action
26 against the district in any court of competent jurisdiction for the
27 determination of the existence and amount of his claim."

28
29 SECTION 2. All provisions of this act of general and permanent nature
30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
31 Revision Commission shall incorporate the same in the Code.

32
33 SECTION 3. If any provisions of this act or the application thereof to
34 any person or circumstance is held invalid, the invalidity shall not affect
35 other provisions or applications of the act which can be given effect without
36 the invalid provisions or application, and to this end the provisions of this

1 act are declared to be severable.

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3 SECTION 4. All laws and parts of laws in conflict with this act are
4 hereby repealed.

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APPROVED: 2/26/1999

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