

Department of Finance and Administration

Legislative Impact Statement

Bill: SB138

Bill Subtitle: TO CREATE A PROCEDURE FOR THE REVOCATION OF A CHARTER OF A MUNICIPAL CORPORATION AS A RESULT OF THE MUNICIPAL CORPORATION'S NONCOMPLIANCE WITH THE LAW.

Basic Change :

Sponsor: Senator Hickey

SB138 would create a procedure for the revocation of a charter of a municipal corporation, have its offices abolished, and the territory and inhabitants to be returned to the county in which the municipal corporation is located. The bill provides that if the Legislative Joint Auditing Committee determines that a municipality has had two (2) or more findings of noncompliance regarding § 14-59-117 in the preceding three (3) years, the Legislative Joint Auditing Committee could provide their findings to the Attorney General who would file pleadings in the Circuit Court of the Sixth Judicial Circuit (Pulaski and Perry Counties) to revoke the municipality's charter.

Upon issuance of an order of the court to revoke the charter, the Governor would appoint a receiver who would take possession of all books and records pertaining to assessment and collection of taxes, take possession of all municipal property, hire staff, resolve outstanding debts, collect fees, and take all actions necessary and beneficial to the municipality's former inhabitants, creditors, and other interested parties.

On a monthly basis, the receiver would remit to the State Treasury all monies collected from taxes and deposit into a bank all monies collected from nontax sources. A report to the court would be submitted every six (6) months reflecting an accounting of monies and taxes collected and settled.

After the revocation of the charter, the receiver would continue to collect taxes levied by the municipality that secured the municipality's indebtedness. These taxes would continue to be collected until the time of the satisfaction of the indebtedness for which the taxes were levied. Sales and use taxes and other types of taxes that were not pledged or dedicated would end on the date of the revocation. The receiver nor the circuit court would be allowed to raise any tax rate in effect as of the date of the revocation of the charter. The circuit court of the Sixth Judicial Circuit would enter a final order of dissolution upon the satisfaction of all of the indebtedness of the municipality.

Revenue Impact :

No impact on State General Revenues.

Taxpayer Impact :

None.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

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Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

SB138 provides for revocation of the charter of a municipal corporation for repeated failure to comply with the requirements of the Arkansas Municipal Accounting Law. All actions for revocation are to be filed in the Sixth Judicial District Circuit Court by the Attorney General. The circuit court is to appoint a receiver to handle the affairs needed to formally dissolve the city. Among the powers of the city that are repealed is the power of taxation.

The bill is unclear regarding what happens to any existing city sales and use tax levied by the city to be dissolved. The bill also does not clearly address the fact that some city sales taxes are pledged to bond repayments or provide directions to either DFA or the receiver with regard to the revenues pledged from the city tax to pay those bonds. Also, the bill possibly conflicts with some existing duties of DFA regarding the administration of the city sales and use tax by stating that the receiver may file a legal action against taxpayers who owe taxes to the extinct municipality. Current state law provides that DFA is to administer and collect all city sales and use taxes.

It may be recommended that the bill be amended to resolve the following issues:

1. If a receiver is appointed, to whom is DFA to pay collections from a city sales and use tax levied by the municipality to be dissolved. Does the answer differ based on whether the tax collections are pledged to the payment of bonds?
2. If a city is dissolved, when is DFA to discontinue collection of a city sales and use tax levied by the dissolved municipality? Is the answer different based on whether the tax was pledged to bond payments?
3. May a receiver attempt to collect any delinquent city sales and use taxes based on tax audits conducted by DFA and tax liens filed by DFA? If so, is that authority exercised in lieu of collection by DFA or in conjunction with DFA?

One final matter should be mentioned. Once a city sales and use tax ends, it is common for revenues to be received for 10 years or more after the tax termination date. This continued collection occurs as DFA continues collection efforts based on tax liens previously filed and as payments are made under bankruptcy plans. Consequently, the bill sponsors should be aware that money from any city sales and use tax will continue to be received long after the city has been dissolved.

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