

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1810

By: Representatives Jones, Dowd, & Parkerson

For An Act To Be Entitled

"AN ACT TO PERMIT CITIES WITH A MANAGEMENT FORM OF GOVERNMENT  
TO SELECT THE METHOD TO CHOOSE THE BOARD OF DIRECTORS AND  
MAYOR; AND FOR OTHER PURPOSES."

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

SECTION 1. SHORT TITLE. This Act shall be known as the City Manager Enabling Act of 1989.

SECTION 2. APPLICABILITY. This Act shall apply to all cities of the first class that now have, or may hereafter adopt, the management form of government. For purposes of this Act, the phrase "city affected by this Act" shall mean a city of the first class that adopts or utilizes the management form of government.

SECTION 3. RATIFICATION OF EXISTING PROCEDURES. A city affected by this Act that is organized under the management form of government on the effective date of this Act shall continue to elect members of the board of directors, or Mayor, or both, and to compensate them in the manner used at the time of the general election immediately preceding the effective date of this Act, unless the city chooses, at a special election called for that purpose, to exercise one of the options provided within this Act.

SECTION 4. CHANGE IN THE SIZE OF THE BOARD OF DIRECTORS. A city affected by this Act may choose by ordinance, to increase or decrease the number of directors, provided that the board of directors, including the office of Mayor, shall always be an uneven number and shall never have less than five (5) members.

SECTION 5. METHODS OF SELECTING DIRECTORS AND THE MAYOR. A city affected by this Act may choose one of the options included within this Act as the method by which to select a Board of Directors. These options are;

(a) All members of the board of directors elected at-large;

(b) An odd number of directors with a number equal to one-half the directors, plus one, being elected from wards and the remaining members elected at-large; for example, on a seven-member board, four directors would be elected by ward and three at-large;

(c) All members of the board of directors but one elected from wards with one member elected at-large who shall be the Mayor.

SECTION 6. DESIGNATION OF POSITIONS. If a city affected by this Act chooses to select some of its members at-large, it shall provide for their election on the ballot as follows:

(a) If a city chooses to select all members of its board of directors at-large, or chooses to select all of its members by ward, each position shall be numbered sequentially and candidates shall file for a numbered position, e.g., Director Position 1, Director Position 2, etc.

(b) If a city chooses to select some of its members of the board of directors by ward, each ward position shall be numbered sequentially beginning with the number one and candidates shall file for the numbered position, e.g., in a city with four ward positions Director Ward 1, Director Ward 2, etc.

(c) If a city chooses to select some members of the board of directors at-large, each at-large position for Director shall be numbered sequentially beginning with the first number after the last designated ward position and candidates shall file for the numbered position, e.g., Director Position 5, Director Position 6, etc.

(d) Notwithstanding the foregoing, if the city provides for the direct election of the Mayor from an at-large position, candidates for the position of Mayor shall file for the position entitled "Mayor", and, if permitted to vote, that position shall vote last in board proceedings.

SECTION 7. DETERMINATION OF WARD POSITIONS. If a city affected by this Act chooses to select some of its members by ward, the ward positions shall be determined as follows:

(a) The county board of election commissioners of the county shall

divide the territory of the city into the number of wards having substantially equal population, according to the most recently published federal census of population in the city, equal to the number of members of the governing board to be elected from wards.

(b) The county board of election commissioners shall complete its apportionment of the respective districts from which members of the governing board of the cities shall be elected and shall file it with the county clerk of the county and with the city clerk of the applicable city.

(c) The districts or wards so established by the board, unless changed or modified by order of a court of competent jurisdiction, shall be the wards of the city from which each of the respective members of the governing body of the city are to be elected.

(d) Following each Federal Decennial Census of population, and following any special federal census of population within a particular city, if there has been a substantial change in the population of the wards from the preceding federal census, the county board of election commissioners shall reapportion the wards in each city in the manner and procedure as provided in this subsection from which the members of the governing board are to be elected.

(e) Notwithstanding the provisions of any other Act, candidates for ward positions shall be residents of the ward they wish to represent. Unless the electors choose otherwise, only those qualified electors residing in a ward may vote on a candidate from that ward.

#### SECTION 8. COMPENSATION OF DIRECTORS.

(a) Neither a director, nor the Mayor, of the city shall receive any compensation for his services unless authorized by the voters of the city at a special or general election. Following such authorization, the board of directors, by ordinance, shall set such compensation pursuant to the provisions of Amendment 56 to the Arkansas Constitution, as may be amended, provided that no ordinance setting compensation shall contain an emergency clause.

(b) Nothing in this provision shall prevent a director from being reimbursed for actual expenses, or provided a per diem, for business or travel conducted on behalf of the city.

SECTION 9. SELECTION OF THE MAYOR.

(a) Unless the City chooses otherwise, the Mayor will be selected by a majority vote of the board of directors from among its members.

(b) If a city chooses to do so, by majority vote of the qualified electors voting on the issue, the Mayor shall be directly elected from an at-large position of the board of directors.

(c) The question of the direct election of the Mayor may be voted on:

(i) at the time the city seeks to organize, or reorganize, under this Act; or,

(ii) at a special election called after the presentation of a petition pursuant to Section 12 of this Act; or,

(iii) at a special election after referral of an ordinance by the board of directors.

(d) If an attempt to provide for the direct election of the Mayor is unsuccessful, the issue shall not be submitted again for a period of two (2) years after the date of the certification of the unsuccessful election.

SECTION 10. VETO POWER OF THE MAYOR.

(a) Unless the Mayor is directly elected in a city where all other directors are elected by ward, the Mayor shall have no veto power.

(b) If the Mayor is directly elected in a city where all other directors are elected from wards by electors residing within the wards, the Mayor may have a veto power if the electors choose by majority vote of those voting on the issue to grant the Mayor a veto power.

(c) If the Mayor is granted a veto power as provided in this Act:

(i) the Mayor cannot otherwise vote on any measure coming before the board of directors except to break a tie vote.

(ii) the Mayor shall have a period of three (3) days from the date of the receipt of any ordinance or resolution adopted by the board of directors to approve or veto it. If he fails to veto it within that period of time, it shall become law without his signature.

(iii) When any ordinance or resolution of the board of directors is vetoed by the Mayor, it shall automatically be on the agenda for consideration of the board of directors at its next regular meeting. The board of directors may override a veto by an affirmative vote of two-third's of the membership, and if so approved, the ordinance or resolution shall become law.

SECTION 11. DIRECTORS AND MAYOR SELECTED BY PLURALITY VOTE. The candidate for any designated position on the board of directors of a city affected by this Act including, if applicable, the position of Mayor, who in any general or special election shall receive votes greater in number than those cast in favor of any other candidate for the position shall be deemed to be elected.

SECTION 12. PETITION PROCESS FOR SPECIAL ELECTIONS UNDER THIS ACT. Except for questions that may be referred to the voters by the board of directors, options provided by this Act shall be voted on at special elections called as a result of a petition for the special election being filed with the City Clerk and provided to the Mayor. The following procedure shall be utilized for both initial elections to organize under the management form of government and for reorganization elections by a city already operating under the management form of government.

(a) A petition that calls for an election on one particular option for selecting members of the board of directors using the form of the question outlined in Section 13(b) of this Act, shall be filed with the City Clerk, and provided to the Mayor. The City Clerk shall note on the petitions the date and time that they were filed. If such a petition contains the signatures of electors equal in number to fifteen percent (15%) of the number of ballots cast for the Mayor, or if the Mayor is not directly elected, for the director position receiving the highest number of votes, in the last general election, then the Mayor shall, by proclamation, submit the question to the electors at a special election, provided:

(i) the City Clerk shall verify the number of signatures on the petitions within ten (10) days of the date they are filed;

(A) if there are insufficient signatures on the petitions, the petitioners shall not receive any extensions for the petition;

(B) if, however, there are a sufficient number of signatures on the petitions, but the City Clerk is unable to verify the required number of signatures as those of qualified electors, then the petitioners will be given ten (10) days to provide a sufficient number of verified signatures.

(ii) the proclamation calling the special election shall be issued within three (3) working days of the date the City Clerk verifies the number of signatures on the petitions;

(iii) the special election shall be held not less than thirty (30) nor more than sixty (60) days after the proclamation calling the election, provided that if the county board of election commissioners certifies in writing that it cannot prepare the ballots because of other pending elections, then the election can be held not more than seventy-five (75) days after the proclamation.

(b) Any election held pursuant to the provisions of this Section shall submit the question presented in substantially the form set forth in Section 10 of this Act.

(c) Except for the provisions of subsection (a)(1) above, if petitions filed with the Mayor that call for an election on one of the options set forth in this Act are found to be insufficient for any reason whatsoever, then new petitions will have to be circulated and filed before the question can be considered again.

(d) Notwithstanding subsection (c) above, if two or more groups file petitions seeking a special election on one of the options set forth in this Act, and the first filed petitions are declared to be insufficient, then the City Clerk will determine the sufficiency of the petitions that were filed next in time. Otherwise, upon a declaration that a set of petitions is sufficient and the first in time, then all petitions filed after the first sufficient petitions and before the special election shall be deemed moot and may be destroyed.

(e) Once an election has been held pursuant to the provisions of this section that results in a change in the manner of selecting directors, or the Mayor, or both, then none of the options presented by this Act, or any other act concerning the organization of the government under the management form of government, may be submitted to the voters for a period of four (4) years from the date of the election.

#### SECTION 13. OPTIONS MAY ALSO BE REFERRED BY ORDINANCE.

(a) The board of directors in a city operating under the management form of government may, by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue, adopt one of the options set forth in Section 12 of this Act, provided that no election on such an ordinance will occur sooner than four (4) years after the last special election on one of the options presented by this Act.

(b) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected Mayor does not have the veto power may, by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue, grant the Mayor the veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the Mayor.

(c) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected Mayor has the veto power may, by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue, remove the Mayor's veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the Mayor.

SECTION 14. INITIAL ORGANIZATION AS A MANAGEMENT FORM OF GOVERNMENT.

(a) A city affected by this Act that has not yet held an election on petitions calling for an election to adopt the management form of government shall submit at a special election a ballot that addresses the following questions:

- (i) whether to adopt the management form of government;
- (ii) which option to follow for the selection of members of the board of directors, the number of directors, and whether to directly elect the Mayor;
- (iii) in a city where all directors are elected by ward but the Mayor is elected at-large, whether the Mayor should have a veto power as provided by Section 10 of this Act.

(b) At the special election the ballot on this question of whether to adopt the management form of government, the ballot shall contain substantially the following question:

FOR adoption of the management form of government as set forth below.....<sup>3</sup>   <sup>3</sup>

AGAINST adoption of the management form of government as set forth below.....<sup>3</sup>   <sup>3</sup>

(c) In the area of the ballot immediately below the questions set forth in subsection (a) one of the following explanations will be provided:

(i) For options where all directors are elected at-large:

(A) A city manager government with a (number) member board of directors elected at-large. The Mayor shall be selected from among the directors; OR

(B) A city manager government with a (number) member board of directors elected at-large. The Mayor shall be directly elected.

(ii) For options where a majority of directors are elected from wards and the remaining directors are elected at-large:

(A) A city manager government with (majority\_plus\_one) members of the board of directors from wards and (remaining\_number) members of the board of directors at-large. The Mayor shall be selected from among the directors.

(B) A city manager government with (majority\_plus\_one) members of the board of directors from wards and (remaining\_number) members of the board of directors at-large. The Mayor shall be directly elected.

(iii) For options where all members of the board of directors are elected from wards, but the Mayor is elected at-large:

(A) A city manager government with a (number) member board of directors all elected from wards. The Mayor shall be directly elected at-large.

(B) If and only if a city affected by this Act votes on an option under this subsection, then the following question shall also appear on the ballot:

FOR giving the Mayor a veto power but no vote unless \_\_\_\_\_  
there is a tie.....<sup>3</sup> <sub>3</sub>

AGAINST giving the Mayor a veto power but no vote unless \_\_\_\_\_  
there is a tie.....<sup>3</sup> <sub>3</sub>

(C) Notwithstanding any other provision of this Act, if the vote pursuant to this subsection to provide the Mayor with a veto power is unsuccessful, the issue shall not be submitted again for a period of two (2)



years after the date of the certification of the unsuccessful election.

(d) If a majority of the votes cast are in favor of the proposition of adopting the management form of government, then the city shall organize under the management form of government in accordance with the options selected.

SECTION 15. REORGANIZATION ELECTION BY A CITY WITH THE MANAGEMENT FORM OF GOVERNMENT. A city affected by this Act that is already organized under the management form of government shall hold a special election on petitions calling for a reorganization under this Act in accordance with the provisions of Sections 10 and 13 of this Act, provided that no special election shall be held on the option already being utilized by the city.

SECTION 16. IMPLEMENTATION OF THE CHANGE IN THE FORM OF GOVERNMENT UNDER THIS ACT. The following procedure will be used to implement this Act by cities that have changed the manner by which directors and the Mayor are selected:

(a) If an option is chosen in which the Mayor is directly elected, the position of Mayor shall be elected at the first general election after the organization, or reorganization, of the city under the management form of government. Because of this fact, at the first meeting of the board of directors after the special election results have been certified, the Mayor shall prepare slips of paper for each member of the board of directors whose current terms expire soonest. One of these slips of paper shall have the word "Mayor" imprinted on it and the rest of the slips shall be blank. Each member whose term will expire soonest after the reorganization will draw a slip of paper and the director drawing the slip of paper with the word Mayor imprinted on it will not draw again. The successor for this Director will be the elected Mayor.

(b) The Mayor shall then prepare slips of paper for each member of the board of directors, except the one that has drawn the Mayor's slip, upon which will be imprinted the name of a director position, or ward position as may be needed. These members of the board of directors shall draw one (1) slip of paper, and the words imprinted on the slip drawn by each member shall determine the position and method of selection for such member's successor.

(c) Upon the expiration of the current term of a member, his successor shall be elected in the manner designated under this section. For example, if

a member draws "Director Ward 1", then that member's successor shall be selected from the area designated as Ward 1 by the county board of election commissioners.

(d) If the incoming board of directors consists of a different number of members than the existing board of directors, then the remaining positions shall be elected at the first general election following adoption of the organization or reorganization.

SECTION 17. RESIGNATION OF DIRECTOR TO RUN FOR MAYOR. If a city affected by this Act adopts an option that provides for the direct election of the Mayor from an at-large position, any sitting member of the board of directors at the time such option is chosen, may run for Mayor at the first election for Mayor without having to resign his seat on the board of directors. After the first election, however, any sitting member of the board of directors that chooses to run for Mayor must resign his position in order to do so unless his term ends at the same time the new term for Mayor begins. If a sitting director resigns his position in accordance with this section, then the remaining members of the board of directors shall select a successor to fill the unexpired term of the director that resigned. Any successor to fill an unexpired term must possess the same qualifications as that required for the position to which he is appointed. A person appointed to fill the unexpired term of a director may be a candidate for reelection to that office.

SECTION 18. REMOVAL OF DIRECTOR.

(a) The holder of office of city director or the Mayor, is subject to removal by the electors qualified to vote for a successor of the incumbent.

(b) The procedure to effect the removal of the incumbent of this elective office shall be as follows;

(i) A petition shall be filed with the City Clerk. This petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least fifteen percent (15%) of the number of ballots cast for all candidates for the position held by the incumbent sought to be removed at the preceding election for that position.

(ii) The petition shall contain a statement of the grounds and reasons on account of which the removal is sought.

(iii) The signatures to the petition need not all be appended to

one (1) paper, but each signer shall add to his signature his place of residence, giving street and number, if any.

(iv) One of the signers of each of the papers shall make an oath before an officer competent to administer oaths that the statements therein made are true as he believes and that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

(c) Within ten (10) days of the date of filing the petition, the City Clerk shall ascertain and determine whether or not the petition is signed by the requisite number of qualified electors. If necessary, the board of directors shall allow the City Clerk extra help for that purpose.

(d) The City Clerk shall attach to the petition his certificate showing the result of his examination.

(e) If by the Clerk's certificate the petition is shown to be insufficient, it may be amended within ten (10) days.

(f) Within ten (10) days after an amendment, the Clerk shall make like examination of the amended petition.

(i) If his certificate shall show the amended petition to be insufficient, it shall be returned to the person filing it, without prejudice, however, to the filing of a new petition to the same effect.

(ii) If the petition shall be deemed sufficient, the Clerk shall submit it to the board without delay.

(g) If the board shall find the petition thus submitted to it contains the requisite number of electors signed thereto and is otherwise found to be sufficient, it shall order and fix a date for holding an election. This date shall be not less than thirty (30) days nor more than forty (40) days from the date of the Clerk's certificate to the board that a sufficient petition is filed.

(h) The board shall make, or cause to be made, publication of notice and all arrangements for holding the election.

(i) The election shall be conducted, returned, and the result thereof declared in all respects as are other such elections under the general election laws of the city.

(j) At the election, the proposition submitted to the electors shall be:

FOR the removal of (name\_of\_officer) from the office of \_\_\_  
(director) (Mayor).....<sup>3</sup> <sub>3</sub>

AGAINST the removal of (name\_of\_officer) from the office \_\_\_  
of (director) (Mayor).....<sup>3</sup> <sub>3</sub>

(k) If the majority of votes cast on the issue shall be in favor of the removal of the officer, the officer shall be deemed removed and his office vacated, and it shall be filled in the manner provided for filling vacancies.

(l) If the majority of the votes cast on that issue shall be against the removal of the officer, the officer shall continue to serve.

(m) No recall petition shall be filed against any officer until he shall have held his office for at least six (6) months, nor shall any officer be subject to more than one (1) recall proceeding between biennial elections.

SECTION 19. LIBERAL CONSTRUCTION. This Act shall be liberally construed to provide affected cities with the maximum amount of freedom to structure their own municipal government within the basic constraints of the management form of government. Nothing in this Act, however, should be read to diminish the powers and authority of the city manager in the management form of government.

SECTION 20. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 21. All laws and parts of laws in conflict with this Act are hereby repealed.