

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Jones and M. Wilson

A Bill

HOUSE BILL 1695

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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

"SUBCHAPTER 2

PUBLIC BODIES CORPORATE AND POLITIC

25-20-201. Creation.

1 (a) Any two (2) or more public agencies are hereby authorized to
2 create a public body corporate and politic as a separate legal entity for the
3 purpose of *constructing, operating and maintaining a public library system.*

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

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

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

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

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

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

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

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

1 setting forth the names of the participating public agencies, and record the
2 certificate in an appropriate book of record in his/her office.

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

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

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

16 25-20-202. Board of directors -- Executive director.

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

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

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

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

34 25-2-203. Powers.

35 (a) Unless its application provides otherwise, each public body shall

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

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

27 25-20-204. Tax exempt status of property and income.

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

33 25-20-205. Immunity.

34 This subchapter does not abrogate, or in any other manner affect, the
35 immunity of the participating public agencies, and such immunity extends also

1 to any public body corporate and politic created pursuant to this subchapter,
2 and to each director thereof.

3 25-20-206. Construction.

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

10 25-20-207. Withdrawal.

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

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

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

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