

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Bearden

# A Bill

SENATE BILL 633

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 14-38-101 TO PROVIDE THAT  
9 UNINCORPORATED AREAS WITHIN TWO MILES, PRESENTLY FIVE  
10 MILES, OF A MUNICIPALITY MAY NOT BE INCORPORATED WITHOUT  
11 THE CONSENT OF THE EXISTING MUNICIPALITY; AND FOR OTHER  
12 PURPOSES."

## Subtitle

15 "UNINCORPORATED AREAS WITHIN TWO MILES  
16 OF A MUNICIPALITY MAY NOT BE  
17 INCORPORATED WITHOUT THE CONSENT OF THE  
18 EXISTING MUNICIPALITY."

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

22 SECTION 1. Arkansas Code 14-38-101 is amended to read as follows:  
23 "14-38-101. Petition for incorporation.

24 (a)(1) When the inhabitants of a part of any county not embraced  
25 within the limits of any city or incorporated town shall desire to be  
26 organized into a city or incorporated town, they may apply, by a petition in  
27 writing, signed by not fewer than seventy-five (75) qualified voters residing  
28 within the described territory, to the county court of the proper county.

29 (2) The petition shall:

30 (A) Describe the territory proposed to be embraced in the  
31 incorporated town and have annexed to it an accurate map or plat thereof;

32 (B) State the name proposed for the incorporated town; and

33 (C) Name the persons authorized to act in behalf of the  
34 petitioners in prosecuting the petition.

35 (b)(1) The court shall not approve the incorporation of any

1 municipality if any portion of the territory proposed to be embraced in the  
2 incorporated town shall lie within two (2) miles from the corporate limits of  
3 an existing municipal corporation unless the governing body of the municipal  
4 corporation has, by written resolution, affirmatively consented to the  
5 incorporation.

6 (2)(A) The two-mile limitation shall not apply if the area proposed  
7 to be incorporated is separated from the corporate limits of an existing  
8 municipality by a natural barrier that makes the area to be incorporated  
9 inaccessible to the existing municipality.

10 (B) The two-mile limitation shall not apply if the area proposed  
11 to be incorporated are lands upon which a real estate development by a single  
12 developer, containing not less than five thousand (5,000) acres has been or  
13 is being developed under a comprehensive plan for a community containing  
14 streets and other public services, parks, and other recreational facilities  
15 for common use by the residents thereof, churches, schools, and commercial  
16 and residential facilities, and which has been subdivided into sufficient  
17 lots for residential use to accommodate a projected population of not fewer  
18 than one thousand (1,000) persons, and for which a statement of record has  
19 been filed with the Secretary of Housing and Urban Development under the  
20 Interstate Land Sales Full Disclosure Act.

21 (c) When any petition shall be presented to the court, it shall be  
22 filed in the office of the county clerk, to be kept there, subject to the  
23 inspection of any persons interested, until the time appointed for the  
24 hearing of it.

25 (d)(1) The court shall, at or before the time of the filing, fix and  
26 communicate to the petitioners, or their agent, a time and place for the  
27 hearing of the petition, which time shall not be less than thirty (30) days  
28 after the filing of the petition.

29 (2)(A)(i) Thereupon, the petitioners or their agent shall cause a  
30 notice to be published in some newspaper of general circulation in the county  
31 for not less than three (3) consecutive weeks.

32 (ii) If there is no newspaper of general circulation in the  
33 county, a notice shall be posted at some public place within the limits of  
34 the proposed incorporated town for at least three (3) weeks before the time  
35 of the hearing.

1           (B) The notice shall contain the substance of the petition and  
2 state the time and place appointed for the hearing."  
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4           SECTION 2. All provisions of this act of a general and permanent  
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
6 Code Revision Commission shall incorporate the same in the Code.  
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8           SECTION 3. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 act are declared to be severable.  
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14           SECTION 4. All laws and parts of laws in conflict with this act are  
15 hereby repealed.  
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17           SECTION 5. EMERGENCY. It is hereby found and determined by the  
18 General Assembly that present law provides that any unincorporated area  
19 within five miles of a municipality may not be incorporated without the  
20 approval of the municipality; that a two-mile limit is more reasonable; that  
21 this act changes the limit from five miles to two miles; and this act should  
22 go into effect immediately in order to allow those unincorporated areas which  
23 will benefit by it to receive the benefit as soon as possible. Therefore, an  
24 emergency is hereby declared to exist and this act being necessary for the  
25 preservation of the public peace, health and safety shall be in full force  
26 and effect from and after its passage and approval.  
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