

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/9/05
A Bill

HOUSE BILL 2956

5 *By: Representatives Willis, Davis*
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO CLARIFY THE PROCEDURE FOR THE MERGER OF
10 CITIES AND INCORPORATED TOWNS; AND FOR OTHER
11 PURPOSES.
12

13 **Subtitle**

14 TO CLARIFY THE PROCEDURE FOR THE MERGER
15 OF CITIES AND INCORPORATED TOWNS.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 14-43-601 is amended to read as follows:

21 14-43-601. Municipal affairs delineated.

22 (a)(1) For the purposes of this subchapter, the term "municipal
23 affairs" means all matters and affairs of government germane to, affecting,
24 or concerning the municipality or its government, except the following, which
25 are state affairs and subject to the general laws of the State of Arkansas:

26 (A) Public information and open meetings;

27 (B) Uniform requirements for competitive bidding on
28 contracts;

29 (C) Claims against a municipality;

30 (D) Requirements of surety bonds for financial officers;

31 (E) Collective bargaining;

32 (F) Pension and civil service systems;

33 (G) Hours and vacations, holidays, and other fringe
34 benefits of employees;

35 (H) The definition, use, and control of surplus revenues
36 of municipally owned utilities;



- 1 (I) Vacation of streets and alleys;
2 (J) Matters coming within the police power of the state
3 including minimum public health, pollution, and safety standards;
4 (K) Gambling and alcoholic beverages;
5 (L) Traffic on or the construction and maintenance of
6 state highways;
7 (M) Regulations of intrastate commerce including rates and
8 terms of service of railroad, bus, and truck lines, cooperatives, and non-
9 municipally owned utilities;
10 (N) The incorporation and merger of municipalities and
11 annexation of territory thereto, including the allowance for the retirement
12 of officials who are sixty-five (65) years of age or older at the time of a
13 merger; and
14 (O) Procedure for the passage of ordinances by the
15 governing body.

16 (2) The municipality may exercise any function or legislative
17 power upon the foregoing state affairs if not in conflict with state law.

18 (b)(1) Matters of public health, which concern emergency medical
19 services, emergency medical technicians, and ambulances, as defined in §§ 20-
20 13-201 - 20-13-209 and 20-13-211, and ambulance companies, shall be included
21 in the term "municipal affairs" of cities of the first class.

22 (2)(A) These cities shall have the authority to enact and
23 establish standards, rules, or regulations which are equal to, or greater
24 than, those established by the state concerning emergency medical services,
25 emergency medical technicians, ambulances, and ambulance companies.

26 (B) The standards, rules, or regulations shall not be less
27 than those established by the state for the rating of the service offered.

28

29 SECTION 2. Arkansas Code Title 14, Chapter 40, Subchapter 12 is
30 amended to read as follows:

31 14-40-1201. Petition for consolidation.

32 (a)(1)(A) Beginning July 1, 1995, when the inhabitants of any city or
33 incorporated town adjoining or contiguous to another smaller municipal
34 corporation of any class in the same county shall desire that the city or
35 incorporated town annex to it or consolidate with it the smaller municipal
36 corporation, they may apply, by a petition in writing signed by a number of

1 qualified electors from each of the municipal corporations equal to not less
2 than fifteen percent (15%) of the total vote cast for the office of mayor in
3 the respective city or town in the last preceding general election, to the
4 city or town council of the larger municipal corporation.

5 (B) Municipal corporations separated by a river shall be
6 deemed contiguous.

7 (2) The petition shall:

8 (A) Describe the municipal corporations to be
9 consolidated; and

10 (B) Name the persons authorized to act in behalf of the
11 petitioners presenting the petition as provided in this section.

12 (3)(A) Beginning July 1, 1995, the petitions shall be filed with
13 the city clerk or town recorder of each municipal corporation, who shall
14 determine the sufficiency of the petitions in each municipality.

15 (B)(i) If any petition is determined insufficient, he or
16 she shall notify the petitioners in writing without delay, and the
17 petitioners shall be permitted ten (10) days from the notification to solicit
18 additional signatures or to prove any rejected signatures.

19 (ii) If the city clerk or town recorder of the
20 respective municipalities decides the petitions are sufficient, he or she
21 each shall notify the petitioners in writing and shall present the petitions
22 to the city or town council of the larger municipal corporation.

23 (b)(1)(A) When the petition is presented to the council, the council
24 shall pass an ordinance in favor of the annexation and approving and
25 ratifying the petition.

26 (B) If the council fails to pass the ordinance required
27 under subdivision (b)(1)(A) of this section, then any interested party may
28 apply for a writ of mandamus to require the performance of the requirement.

29 (2) In that event, it shall be the duty of the persons named in
30 the petition authorized to act in behalf of the petitioners to file the
31 petition, together with a certified copy of the ordinance, in the office of
32 the county clerk of the county in which the municipal corporations are
33 situated.

34
35 14-40-1202. Special election called.

36 (a)(1)(A) Upon presentation of the petition to the county court by the

1 authorized persons, the court shall at once order and call a special election
2 in both of the municipal corporations on the question of the annexation and
3 the name of the proposed consolidated municipality.

4 (B) The court shall give thirty (30) days' notice of the
5 election by publication one (1) time a week in some newspaper with a bona
6 fide circulation in the territory and by notices posted in conspicuous places
7 in the territory.

8 (2) The court shall appoint one (1) judge and one (1) clerk in
9 each ward or other division of each municipal corporation, and the mayor and
10 city council of each of the municipal corporations shall select two (2)
11 judges and one (1) clerk for each of the wards or other divisions having the
12 qualifications of electors, to act as judges and clerks of election within
13 the respective wards.

14 (3) The court shall fix all polling places at which the voting
15 shall take place.

16 (b)(1) The election shall be held and conducted in each corporation in
17 the manner prescribed by law for holding elections for cities or incorporated
18 towns, so far as they are applicable. Election expenses are to be paid by the
19 larger city or incorporated town.

20 (2)(A) All elections held under this subchapter are made legal
21 elections.

22 (B)(i) The elections shall be governed by and subject to
23 all the laws relating to general elections so far as applicable.

24 (ii) All judges, clerks, and persons voting in the
25 elections shall be subject to the penalties prescribed by the general
26 election laws of the state for any violation of the general election laws to
27 the same extent as though the elections were specifically included in the
28 general election laws of the state.

29 (3) The returns of the elections shall be made to the court and
30 the result thereof declared by the court.

31 (c) In order to provide for an orderly transition of affairs if the
32 petition calls for a delay in the implementation of the consolidation, the
33 consolidation shall not take effect until the date specified in the petition,
34 except that the consolidation shall be delayed not longer than eighteen (18)
35 months from the date the election results are declared by the court.

36

1 14-40-1203. Election results.

2 (a) At any election held under this subchapter, all qualified electors
3 who are residents of either municipality shall be allowed to vote on the
4 adoption or rejection of the proposed annexation or consolidation and the
5 name of the proposed consolidated municipality.

6 (b)(1)(i) If a majority of the votes cast in each of the respective
7 municipalities, considered as a separate and distinct unit and without
8 reference to the vote cast in the other, shall be in favor of the
9 consolidation or annexation, then the county court shall declare, by an
10 appropriate order, the annexation or consolidation consummated unless the
11 petition has requested a delayed date for implementation of the
12 consolidation.

13 (ii) If the petition calls for a delay in the
14 implementation of the consolidation and if a majority of the votes cast in
15 each of the respective municipalities is in favor of the consolidation, then
16 the county court shall order the annexation or consolidation consummated on
17 the date specified in the petition, except that the date shall not be more
18 than eighteen (18) months after the date election results are declared by the
19 court.

20 (B)(i) If a majority of the votes cast in each of the
21 respective municipalities, considered as a separate and distinct unit and
22 without reference to the vote cast in the other, shall be in favor of the
23 same name of the municipality, then the county court shall declare, by
24 appropriate order, the name of the consolidated municipality.

25 (ii) If a majority of the votes cast in each of the
26 respective municipalities, considered as a separate and distinct unit and
27 without reference to the vote cast in the other, shall not be in favor of the
28 same name of the municipality, then the county court shall declare, by
29 appropriate order, the name of the consolidated municipality to be the name
30 of the larger municipality.

31 (C)(i) Upon the making of the order, the smaller municipal
32 corporation and the territory comprising it shall, in law, be deemed and be
33 taken to be included and shall be a part of the larger municipal corporation.

34 (ii) The inhabitants thereof shall in all respects
35 be citizens of the larger municipal corporation.

36 (2) If a majority of the votes of either municipal corporation

1 shall be against annexation, then the city or incorporated town shall not be
2 again permitted to attempt the consolidation for two (2) years.

3
4 14-40-1204. Contest of election.

5 Any elector shall have the right to test the legality and fairness of
6 the election and the declared results in a proceeding before the circuit
7 court without being required to give bond for costs. However, no such contest
8 shall interfere with the consolidation until finally decided.

9
10 14-40-1205. Division of smaller municipality into wards.

11 (a) As soon as practicable after the annexation, the council of the
12 larger city or incorporated town shall, by ordinance, form the territory of
13 the smaller municipality into such number of wards as shall seem to be to the
14 best interest of the combined city or incorporated town, or shall change the
15 number and boundaries of all the wards of the entire city or incorporated
16 town, or any part of them, as shall seem to be to the best interests of the
17 combined city or incorporated town. In such way, however, the wards shall
18 have as nearly an equal population and assessed valuation of property as
19 practicable and as, in the opinion of the council, would best subserve the
20 true interest of the citizens and taxpayers of the combined city or
21 incorporated town.

22 (b) The territory and inhabitants of the smaller municipal corporation
23 shall receive that fair and just representation in the city council as the
24 size, population, and assessed valuation of property demands, as compared
25 with the representation accorded to other wards of the city or incorporated
26 town.

27 (c) If inhabitants of the smaller municipal corporation feel aggrieved
28 at the number of wards, or in any manner dissatisfied with the division of
29 the territory into wards, upon petition of fifty (50) qualified electors, the
30 circuit court is authorized to make changes in the number of wards as the
31 justice of the case requires, in the manner provided in § 14-43-311, so far
32 as applicable.

33
34 14-40-1206. Plat of consolidated municipality.

35 (a) The council of the larger city or incorporated town shall cause a
36 plat to be made of the entire city or incorporated town after the annexation

1 thereto and the division into wards of the smaller municipal corporation.

2 (b)(1) A certified copy of the plat shall be filed and recorded in the
3 office of the circuit court and ex officio recorder of the county and with
4 the Secretary of State.

5 (2)(A) Thereafter, the plat shall stand, be, and remain the
6 division of the city or incorporated town into wards, and the number and
7 boundaries thereof, until such time as it may be afterwards changed according
8 to law.

9 (B) However, no change in the boundaries of the wards of
10 the larger city or incorporated town shall determine or affect the time of
11 service of any previously elected alderman of any ward in the larger city or
12 incorporated town.

13
14 14-40-1207. Special election of aldermen or all city officials.

15 (a)(1)(A) Except as provided under subdivision (a)(1)(B) of this
16 section, the city or town council shall call a special election of aldermen,
17 to be held at such times and places as it may direct in the wards of the
18 smaller municipality and for the election of aldermen from any other new
19 wards that may be created by the council out of territory included in the
20 larger city or incorporated town before the annexation, as provided in this
21 subchapter.

22 (B) If the petition calls for a citywide election for all
23 officials of the new consolidated city or incorporated town, then the city or
24 town council shall call a special election for all city or town officials to
25 be held at the times and places as it may direct throughout each ward of the
26 consolidated city or incorporated town.

27 (2) If the implementation of the consolidation of the cities or
28 towns is delayed, the special election for new aldermen or all city officials
29 shall be held at least forty-five (45) days before the effective date of the
30 consolidation.

31 (b) Each ward of the consolidated city or incorporated town shall have
32 two (2) aldermen, to be elected in the same manner and for the same term as
33 aldermen are elected in cities and incorporated towns.

34
35 14-40-1208. Existing officers, etc.

36 (a) The term of office of all officers, aldermen, and employees of the

1 smaller municipality and all laws in force therein shall cease upon and after
2 the consolidation.

3 (b) If a municipality is subject to merger, then the resulting
4 municipality may allow for the retirement of officials who are sixty-five
5 (65) years of age or older at the time of a merger.

6
7 14-40-1209. Public property.

8 All public property of the smaller municipality shall belong to the
9 consolidated city or incorporated town.

10
11 14-40-1210. Payment of existing debts.

12 (a)(1) The debts of each municipality owing prior to or at the time of
13 the consolidation shall be paid by the consolidated municipality by
14 appropriating the revenues derived from year to year from the territory and
15 the inhabitants of what was formerly the larger municipality to the payment
16 of the debts of the larger municipality owing before the consolidation.

17 (2) In like manner, the debts of the smaller municipality owing
18 prior to and at the time of the consolidation shall be paid by appropriating
19 the revenues derived from what was formerly the smaller municipality in such
20 manner as to do the least injustice to the inhabitants of each former
21 municipality in the way of a decrease in the improving or bettering of the
22 territory as it formerly existed.

23 (b) In appropriating the revenues of either municipality to pay its
24 own debts existing prior to the consolidation, neither the territory nor
25 inhabitants of what was formerly the larger or smaller municipality shall be
26 discriminated against in the distribution of police protection, board of
27 health service, fire protection, public lighting, or other like public
28 service.

29
30 14-40-1211. Prior debts not preferred.

31 (a) Creditors of either municipal corporation, on account of
32 obligations made prior to consolidation, shall not be paid sooner or shall
33 not be permitted to enforce the collection of their debts sooner against the
34 consolidated city or incorporated town than the separate municipality prior
35 to consolidation could have paid its own debts or could have been forced to
36 do so.

1 (b) In any proceeding in court, by mandamus or otherwise, against a
2 consolidated city or incorporated town to enforce the obligations created by
3 either municipal corporation prior to consolidation, no greater part of the
4 revenue of the consolidated city or incorporated town shall be subject to be
5 applied by the court at the instance of the creditor to the payment of the
6 obligations than could have been subjected against the revenues of the
7 particular city or incorporated town creating the obligation prior to
8 consolidation if the particular municipal corporation having so created the
9 obligation had not been annexed.

10
11 14-40-1212. Rights of annexed territory to benefits of its revenues.

12 (a) The wards formed out of the territory comprising the former
13 territory of the smaller municipal corporation annexed under the provisions
14 of this subchapter shall always receive betterments and improvements in an
15 amount equal to the amount of revenue derived by the consolidated
16 municipality from the territory and inhabitants of the smaller municipal
17 corporation, after having deducted the pro rata share of the territory of the
18 running expenses necessary to be expended in maintaining the government of
19 the entire city or incorporated town and after having taken into
20 consideration the amount of revenues necessarily appropriated to pay the
21 indebtedness due by the smaller municipality before consolidation, until the
22 indebtedness is paid. In addition, those wards shall always receive their
23 fair and equitable proportion of the police, board of health, fire
24 protection, and lighting service of the larger city or incorporated town.
25 They shall in all other ways receive fair and liberal treatment and their
26 fair proportion of the expenditure of moneys made by the larger city or
27 incorporated town.

28 (b)(1) Aldermen representing the wards composing the territory of the
29 smaller municipal corporation before consolidation shall have a right, at all
30 times, to demand of the city council the benefit of the revenue collected
31 from the wards, as provided for in this section.

32 (2) On the refusal of the council, the aldermen shall have a
33 right to enforce the revenue rights by mandamus or other appropriate
34 proceedings.

35 (c) In the event the aldermen, or fifty (50) qualified electors of the
36 territory annexed, feel aggrieved in reference to the amount of revenue

1 expended on the territory or as to the other rights guaranteed in this
2 section to the annexed municipality, they may submit the matter to the
3 circuit court, which is authorized by appropriate orders to compel the
4 consolidated city or incorporated town to give the former territory of the
5 smaller municipal corporation the full benefit of its revenue as provided in
6 this section.

7

8 14-40-1213. Franchises, contracts, and other obligations.

9 No franchises, contracts, or other obligations of an extraordinary
10 nature, or other than those necessary for the ordinary and usual running of
11 the affairs of either municipal corporation, which have been granted, made,
12 or created by either municipal corporation after the passage of an ordinance
13 favoring annexation, and prior to the consummation of the annexation, shall
14 be valid and binding against the consolidated municipality, or any part
15 thereof, in the event that a consolidation is effected within sixty (60) days
16 after passage of the ordinance, unless they shall be afterward ratified by
17 the consolidated city or incorporated town.

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/s/ Willis, et al

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