

1 State of Arkansas As Engrossed: S3/29/23 S3/30/23 S4/3/23

2 94th General Assembly

# A Bill

3 Regular Session, 2023

SENATE BILL 414

4

5 By: Senators J. Petty, J. English, Gilmore, K. Hammer, G. Leding, D. Wallace

6 By: Representatives McAlindon, Beaty Jr., Clowney, D. Garner, Hawk, L. Johnson, Lundstrum,

7 Pilkington, Puryear, D. Whitaker

8

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## For An Act To Be Entitled

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AN ACT TO AMEND THE REGIONAL AIRPORT ACT; TO CREATE A

11

PROCEDURE FOR ANNEXATION AND DETACHMENT; AND FOR

12

OTHER PURPOSES.

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15

## Subtitle

16

TO AMEND THE REGIONAL AIRPORT ACT; AND TO

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CREATE A PROCEDURE FOR ANNEXATION AND

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DETACHMENT.

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

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SECTION 1. Arkansas Code § 14-362-103(a)(2), concerning the establishment of an airport authority, is amended to read as follows:

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(2)(A) ~~No~~ A county or municipality shall not participate in ~~such~~ the creation and establishment of an authority ~~unless and~~ until:

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(i) its ~~The~~ governing body ~~se~~ of the county or municipality provides for the creation and establishment by ordinance; and

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(ii) The county or municipality enters into an agreement with the other participating governmental units ~~establishing that~~ establishes the terms and conditions for the operation of the authority.

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(B) The terms and conditions established under subdivision (a)(2)(A)(ii) of this section shall be within the limitations provided in this chapter and ~~such~~ other laws of the State of Arkansas as may be applicable.

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1 SECTION 2. Arkansas Code § 14-362-104(b), concerning the creation of  
2 an authority as a public corporation, is amended to read as follows:

3 (b) The exercise of the powers and performance of duties provided for  
4 in this chapter by each authority and its officers, agents, and employees  
5 are:

6 (1) declared to be public Public and governmental functions,  
7 and

8 (2) exercised Exercised for a public purpose and matters of  
9 public necessity, ~~conferring upon each authority governmental immunity from~~  
10 ~~suit in tort.~~

11  
12 SECTION 3. Arkansas Code § 14-362-104, concerning the creation of an  
13 authority as a public corporation, is amended to add an additional subsection  
14 to read as follows:

15 (c)(1) It is the public policy of the State of Arkansas that an  
16 authority created under this chapter and the directors and employees of the  
17 authority are immune from liability and from suit for damages except to the  
18 extent that the damages may be covered by liability insurance.

19 (2) An authority created under this chapter is immune from a  
20 tort action resulting from an act or omission of its directors, employees, or  
21 agents.

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23 SECTION 4. Arkansas Code § 14-362-105 is amended to read as follows:  
24 14-362-105. Appointment of board.

25 ~~(a) Subject to such limitations as may be contained in the agreement~~  
26 ~~provided for in § 14-362-103, the~~ The management and control of each  
27 authority and its property, operations, business, and affairs shall be lodged  
28 in a board of directors of not less than six (6) nor more than twenty-four  
29 (24) persons who shall be appointed for terms of six (6) years each as  
30 ~~hereinafter~~ provided in this section.

31 (b)(1) The number of members of the board that each of the  
32 participating governmental units is entitled to appoint to the board shall be  
33 ~~set forth~~ provided in the agreement ~~provided for in~~ under § 14-362-103.

34 (2) However, each of the participating governmental units shall  
35 be entitled to appoint at least one (1) member to the board and, if the state  
36 is a participant in the authority, the state shall be entitled to appoint a

1 majority of the members of the board.

2 (3) Appointments A member of the board shall be made appointed  
3 by the mayor of each participating municipality, the county judge of each  
4 participating county, and the Governor.

5 (c)(1) The members of the board of an authority shall have staggered  
6 terms, ~~as provided in the agreement establishing the authority,~~ as follows:

7 (A) One-third (1/3) of the members for six-year terms;

8 (B) ~~one-third~~ One-third (1/3) of the members for four-year  
9 terms; and

10 (C) ~~one-third~~ One-third (1/3) of the members for two-year  
11 terms.

12 (2) Thereafter, all appointments shall be for six-year terms.

13 (d)(1) All members of the board appointed by the participating  
14 municipalities and counties shall be bona fide residents and qualified  
15 electors of the county or municipality which the members represent.

16 (2) All members of the board appointed by the state shall be  
17 bona fide residents of the state.

18 (e)(1) Except as provided under subdivision (e)(2) of this section, a  
19 member of the board shall not:

20 (A) Participate in, vote on, influence, or attempt to  
21 influence an official decision of the board of directors if he or she has a  
22 pecuniary interest in the matter under consideration by the board of  
23 directors; or

24 (B) Be a part of any discussion or vote on any matter that  
25 may exclusively benefit the member of the board.

26 (2) A member of the board may participate in, vote on,  
27 influence, or attempt to influence an official decision of the board of  
28 directors if the only pecuniary interest that he or she accrues is:

29 (A) Incidental to his or her position as a member of the  
30 board; or

31 (B) As a member of a profession, occupation, or large  
32 class to no greater extent than the pecuniary interest could reasonably be  
33 foreseen to accrue to all other members of the profession, occupation, or  
34 large class.

35 (3) The provisions in this subsection supersedes any conflicts  
36 in any provisions contained in an existing regional airport agreement.

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2 SECTION 5. Arkansas Code § 14-362-109(12), concerning the powers of an  
3 authority is, repealed.

4 ~~(12)(A) To constitute the authority or a committee of the~~  
5 ~~authority as improvement district commissioners and to create and operate an~~  
6 ~~improvement district composed of the area encompassed within the~~  
7 ~~jurisdictions of the participating governing bodies upon the petition of~~  
8 ~~persons claiming to be two thirds (2/3) in value of the owners of real property~~  
9 ~~in the area, as shown by the last county assessment.~~

10 ~~(B) The improvement district shall be for the purpose of~~  
11 ~~financing the construction, reconstruction, or repair of the regional airport~~  
12 ~~and its facilities.~~

13 ~~(C) The creation and operation of an improvement district~~  
14 ~~shall be, to the extent consistent with this chapter, in accordance with the~~  
15 ~~procedures established by the laws of this state for the creation and~~  
16 ~~operation of municipal improvement districts;~~

17  
18 SECTION 6. Arkansas Code § 14-362-132(b) and (c), concerning an  
19 authority's exemption from annexation and municipal regulation, are amended  
20 to read as follows:

21 (b)(1) The property and operations of an authority shall be exempt  
22 from the enactment of any rules, regulations, ordinances, permit  
23 requirements, and enforcement by a municipality.

24 (2) A municipality may enact and collect a sales tax, a liquor  
25 tax, and a hotel, motel, and restaurant tax on the operations located on the  
26 property of the authority that is located within the municipality, but other  
27 taxes or fees enacted by a municipality pertaining to the property or  
28 operations of the authority shall require the approval of a majority vote of  
29 the board of directors of the authority.

30 ~~(c) If a municipality in which the property of an authority is located~~  
31 ~~merges with or is annexed or consolidated by another municipality, an An~~  
32 ~~authority may ~~de-annex~~ detach from the a municipality upon a majority vote of~~  
33 ~~the board of directors of the authority compliance with the detachment~~  
34 ~~requirements under § 14-362-301 et seq.~~

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36 SECTION 7. Arkansas Code Title 14, Chapter 362, is amended to add an

1 additional *subchapter* to read as follows:

2  
3 Subchapter 3 – Annexation and Detachment

4  
5 14-362-301. Legislative findings.

6 (a) The General Assembly finds that:

7 (1) The public and governmental functions of an authority  
8 required under this chapter are best achieved by giving the authority the  
9 discretion to determine whether it is in the best interest of the authority  
10 to achieve its mission in conjunction with or separate from a municipality;

11 (2) The requirements of this subchapter are:

12 (A) Supplemental to constitutional or statutory provisions  
13 now existing or later adopted which may provide for an authority's annexation  
14 or detachment from a municipality; and

15 (B) Intended to:

16 (i) Provide for the orderly detachment of an  
17 authority from one (1) or more municipalities in a manner that protects the  
18 interests of the authority and the municipality; and

19 (ii) Ensure to the extent a municipality may have  
20 issued bonds or other evidences of indebtedness secured by or payable from a  
21 tax or other revenue relating to the operations of the authority, that the  
22 bonds or other evidences of indebtedness are protected so that the contract  
23 for repayment between a municipality and any third party is not impaired.

24  
25 14-362-302. Involuntary annexation prohibited.

26 Property owned by an authority that is not within the corporate limits  
27 of a municipality shall not be annexed by a municipality without a two-thirds  
28 (2/3) vote of approval by the members of the board of directors of the  
29 authority.

30  
31 14-362-303. Coordination with Arkansas Geographic Information Systems  
32 Office to annex or detach.

33 Before an authority begins an annexation or detachment proceeding under  
34 this subchapter, the authority shall coordinate with the Arkansas Geographic  
35 Information Systems Office for preparation of legal descriptions and digital  
36 mapping for the annexation or detachment areas.

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14-362-304. Petition for Annexation – Definition.

(a) As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town.

(b) Except as provided in subsection (c) of this section, an authority may petition a municipality for voluntary annexation in the same manner provided in § 14-40-609.

(c)(1) The creation of an enclave owned by an authority is not prohibited under this section.

(2) An authority petitioning a municipality to annex land containing an enclave under subdivision (c)(1) of this section shall include the following in the petition:

(i) The reason the authority's continued ownership of the enclave is necessary; and

(ii) The authority's intended use of the enclave.

14-362-305. Petition for detachment.

(a) An authority may petition for detachment under this section upon the passing of a resolution by the board of directors of the authority:

(1) Recommending the detachment of property owned by the authority from one (1) or more municipalities in which the authority's property is located; and

(2) Approved by a vote of at least two-thirds (2/3) of the members of the board.

(b)(1) An authority shall file a petition for detachment in the county in which the property the authority is petitioning for detachment is located with the:

- (A) County court;
- (B) County assessor; and
- (C) County clerk.

(2) A petition filed under subdivision (b)(1) of this section shall:

- (A) Be in writing;
- (B) Name the persons authorized to act on behalf of the

authority;

1 (C) Contain an attestation signed before a notary or  
2 notaries by a person authorized to sign for the authority as the owner of the  
3 property or an agent of the authority confirming the desire to be detached;

4 (D) Contain an accurate description of the relevant  
5 property;

6 (E) Contain a letter or title opinion from a certified  
7 abstractor or title company verifying that the authority is the owner of  
8 record of the relevant property;

9 (F) Contain a letter or verification from a certified  
10 surveyor or engineer verifying that an enclave that is not owned by the  
11 authority will not be created;

12 (G) Include a schedule of services that are currently  
13 provided by the municipality to the property being detached; and

14 (H) Identify any special considerations or factors that  
15 the authority and municipality should agree to before the detachment is  
16 finalized, including without limitation:

17 (i) The negotiation of outstanding debt obligations;  
18 and

19 (ii) A determination of all financial matters  
20 pertaining to the schedule of services provided by the municipality under  
21 subdivision (b)(2)(G) of this section.

22 (c)(1) Within fifteen (15) days from the date the petition is filed  
23 under subdivision (b)(1) of this section, the county assessor and the county  
24 clerk shall:

25 (A) Determine whether the petition meets the requirements  
26 of subdivision (b)(2) of this section; and

27 (B) Report the determination required under subdivision  
28 (b)(2) of this section to the county court.

29 (2)(A) If it is determined that the petition does not meet the  
30 requirements of subdivision (b)(2) of this section, the county court shall  
31 enter a court order identifying the deficiencies in the petition within five  
32 (5) business days from the date the determination was reported to the county  
33 court under subdivision (c)(1)(B) of this section.

34 (B)(i) An authority may file an amended petition at any  
35 time after the county court enters the court order required under subdivision  
36 (c)(2)(A) of this section.

1 (ii) The amended petition is required to meet the  
2 requirements of subdivision (b)(2) of this section.

3 (3) If a county assessor and a county clerk report that the  
4 petition meets the requirements of subdivision (b)(2) of this section, the  
5 county court has fifteen (15) business days from the date the determination  
6 was reported to:

7 (A) Review the petition and records for completeness and  
8 accuracy;

9 (B) Determine that the detachment does not create an  
10 enclave that is not owned by the authority;

11 (C) Confirm the petition contains the schedule of services  
12 required by subdivision (b)(2)(G) of this section;

13 (D) At the discretion of the county judge, determine  
14 whether the county will be responsible for the maintenance of dedicated  
15 public roads and rights-of-way abutting or traversing the property that is  
16 being detached; and

17 (E) Issue an order stating the findings required under  
18 this subdivision (c)(3) and provide the:

19 (i) Order to the authority; and

20 (ii) Petition and order to the municipality to which  
21 the authority is petitioning for detachment.

22 (d)(1) An order issued under subdivision (c)(3)(E) of this section  
23 shall require the municipality being petitioned for detachment to file a  
24 response with the county court:

25 (A) Within fifteen (15) business days from the date the  
26 court order was received; and

27 (B) That states whether the municipality agrees or does  
28 not agree with the special considerations or factors to be addressed before  
29 the detachment is finalized under subdivision (b)(2)(H) of this section.

30 (2) A municipality that does not agree with the special  
31 considerations or factors stated in the petition under subdivision (b)(2)(H)  
32 of this section shall file a response with the county court that:

33 (A) States the reason the municipality disagrees with the  
34 special consideration or factors stated in the petition under subdivision  
35 (b)(2)(H) of this section; and

36 (B) Includes any additional special considerations or



1 factors the municipality may have.

2 (e)(1) An authority has five (5) business days from the date the  
3 municipality files the response required under subdivision (d)(2) of this  
4 section to respond to the municipality's additional special considerations or  
5 factors under subdivision (d)(2)(B) of this section.

6 (2)(A) If the authority does not agree with the additional  
7 special considerations or factors, the county court clerk shall set a hearing  
8 date to determine the special considerations or factors to be addressed  
9 before detachment.

10 (B) The hearing under subdivision (e)(2)(A) of this  
11 section shall be set on a date of earliest convenience for both parties but  
12 no later than sixty (60) calendar days after the filing of the authority's  
13 response under subdivision (e)(1) of this section.

14 (3)(A) If a municipality agrees with the special considerations  
15 or factors in the petition required under subdivision (b)(2)(H) of this  
16 section, then the county court shall enter an order providing a timeline for  
17 the authority and the municipality to negotiate in good faith and to reach an  
18 agreement with respect to the special considerations or factors required  
19 before detachment is finalized.

20 (B) Unless a different period of time is mutually agreed  
21 to by the municipality and the authority, the county court shall require the  
22 municipality and the authority to report their agreement to the county court  
23 not later than ninety (90) calendar days from the date the order was filed.

24 (C)(i) If an authority and a municipality cannot reach an  
25 agreement by the deadline provided under this subdivision (e)(3), the county  
26 court shall order the municipality and authority to participate in mediation.

27 (ii) The mediation shall take place not later than  
28 sixty (60) calendar days from the date of the order requiring mediation.

29 (iii)(a) The mediator shall file a mediation report  
30 with the county court no later than thirty (30) calendar days after the date  
31 of the mediation required under subdivision (e)(3)(C)(i) of this section.

32 (b) The mediator's report shall:

33 (1) Contain the agreed upon terms  
34 relating to the special considerations and factors, but only if the mediation  
35 is successful; or

36 (2) If the mediation is unsuccessful,

1 state that the parties were unable to come to an agreement relating to the  
2 special considerations and factors.

3 (iv)(a) The county court shall enter an order  
4 confirming the detachment, and no later than thirty (30) calendar days from  
5 the date the mediation report is filed, the county clerk shall forward a copy  
6 of the order to the county assessor and to the Secretary of State.

7 (b) The order shall contain:

8 (1) The final terms relating to the  
9 special considerations and factors, but only if the mediation is successful;  
10 or

11 (2) If the mediation is unsuccessful,  
12 the order shall only address the matters required under § 14-36-306.

13 (f) The property shall be detached from the municipality on the date  
14 the county court enters the order confirming the detachment and the county  
15 clerk forwards a copy of the order as required under subdivision  
16 (e)(3)(C)(iv) of this section.

17 (g)(1) This section shall not prevent the municipality and the  
18 authority from presenting a joint agreement confirming their mutually agreed  
19 resolution of special considerations or factors that should be addressed  
20 before detachment at any time after the petition for detachment is filed by  
21 the authority.

22 (2) Absent a determination by the county court that the mutually  
23 agreed resolution under subdivision (g)(1) of this section violates Arkansas  
24 law, the county court shall accept the mutually agreed resolution and include  
25 it in the order approving detachment.

26  
27 14-362-306. Special considerations relating to existing municipal debt  
28 obligations.

29 (a) If an authority detaches from a municipality that has previously  
30 issued and currently has outstanding bonds or other evidences of indebtedness  
31 that are secured by or payable from taxes or other revenues relating to the  
32 operations of the authority, then the detachment shall not be effective until  
33 the authority and the municipality mutually have attempted to agree in  
34 writing to a lump sum payment or recurring or periodic payments in an amount  
35 sufficient to avoid impairing the municipality's contractual obligations to  
36 the persons or entities to which payment is due.

1 (b) In reaching the agreement required under subsection (a) of this  
2 section, an authority and the municipality may engage with and rely on the  
3 opinions and reports of legal and financial professionals to ensure that the  
4 agreement reached by the authority and the municipality does not diminish the  
5 prospects of, or adversely interfere with, expected payments to be received  
6 by the persons or entities to which payment is due; and therefore, does not  
7 unconstitutionally impair the contract between the municipality and the  
8 persons or entities to which payment is due.

9 (c)(1) If an authority and a municipality cannot reach an agreement,  
10 any taxes or other revenues relating to the operations of the authority shall  
11 be collected in the same manner and amounts as if the land had not been  
12 detached.

13 (2) However, after a petition for detachment has been filed by  
14 the authority, the municipality:

15 (A) Shall not take any action to:

16 (i) Increase the taxes assessed or levied;

17 (ii) Lengthen the maturity date of the debt  
18 obligations;

19 (iii) Decrease amounts paid by other persons or  
20 entities that are contributing to amounts used by the municipality to pay the  
21 debt obligations; or

22 (iv) Reallocate available revenues to the detriment  
23 of the authority beyond those in existence as of the date of the filing of  
24 the petition with the county court; and

25 (B) As permitted by the documents relating to the debt  
26 obligations, shall use or escrow all pledged taxes and revenues to pay off or  
27 prepay the debt obligations and shall not use the pledged taxes and revenues  
28 for any other purpose.

29 (d)(1) An authority and a municipality shall enter into a payment in  
30 lieu of taxes agreement, interlocal cooperative agreement, or similar  
31 agreement documenting the agreement reached by the authority and the  
32 municipality with respect to any taxes collected or payments made by the  
33 authority while debt obligations are outstanding.

34 (2) The agreement required under subdivision (d)(1) of this  
35 section shall contain terms and conditions permitting the renegotiation or  
36 revision of payments in the event of unforeseen force majeure events,

1 including without limitation a global pandemic or population or retail  
2 growth, that significantly modify the facts known or assumptions made in  
3 calculating the payments agreed upon.

4 (3) The municipality shall provide the certificates and  
5 directions to the Department of Finance and Administration that are necessary  
6 to effect the agreement between the authority and the municipality.

7 (e) A municipality may refinance existing debt obligations after an  
8 authority has filed a petition for detachment to achieve debt service savings  
9 so long as the refinancing does not increase annual debt service payments,  
10 extend the maturity date, or increase the aggregate amount of principal due  
11 with respect to the debt obligation.

12 (f) Upon the payment in full at maturity or optional redemption, other  
13 than in connection with a refunding permitted under subsection (e) of this  
14 section, the authority's property and operations shall be released and exempt  
15 from future tax collections or payments, as applicable.

16 (g) A municipality shall not initiate litigation alleging impairment  
17 of contract if the authority and the municipality have entered into a written  
18 agreement under subsection (d) of this section or if the county court has  
19 entered an order for detachment under § 14-362-305(e) that is consistent with  
20 subsection (c) of this section.

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22 */s/J. Petty*  
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