



## 2023 Legislative Session Changes that Affect Municipal Finance

### ACT 127

Act 127 is nothing more than a clarification for a previously amended law. However, it breeds good discussion about the overall importance of keeping a municipality fiscally responsible. In 2021, the General Assembly passed HB1690 (enacted as Act 709 of 2021). Act 709 was a crackdown, for lack of better words, on municipalities who were mispending street-fund funds and were not paying back the street fund for the misappropriation. This Act amended the law to withhold street funds from municipalities until either: (a) the municipality repaid the entirety of the funds owed to the street fund or (b) passed an ordinance or resolution committing to pay, and then pay, 10% of the municipality's general revenue back into the street fund until the funds owed were repaid. The problem was that general revenue was not adequately defined in Act 709 and could arguably have included every dollar that was in the general fund. We all know that revenues dedicated to specific things—and therefore can only be used for those specific things—may also go into the general revenue, and therefore, it was not an adequate representation to just say “10% of general revenue”, as opposed to “10% of general revenue that is not restricted”. Act 127 clarified this and amended the definition of general revenue to mean, “any revenue deposited into the general fund account that is not: (a) restricted by the source of that revenue; or (b) transferred from another municipal fund account.”

### Act 208

Prior to Act 208, the law regarding bidding for commodities, codified in Ark Code Ann. 14-58-303(b)(2)(iii) stated, “The mayor or the mayor’s authorized representative has exclusive power to award the bid to the lowest responsible bidder and may reject any and all bids received.” The League has always been of the mind that “lowest responsible bidder” included a lot more than just taking the cheapest offer. However, some wanted clarification to the law itself. Therefore, Act 208 amended ACA 14-58-303 to allow a municipality to base its bid award on: (1) the lowest immediate cost; (2) the lowest demonstrated life cycle cost; (3) the lowest demonstrated term costs; or (4) a combination of two or more of the lowest immediate cost, lowest demonstrated life cycle cost, and the lowest demonstrated term cost.

### Act 211



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With the advancement of hybrid and electric vehicles, the state has been looking at ways for these types of vehicles to pay their fair share of the cost to maintain roads and highways. For those of us that drive internal combustion engine vehicles—just normal gas burning vehicles—we pay this cost at the pump in the form of a fuel tax. Obviously, hybrid vehicles do not purchase much fuel and EVs purchase zero. Therefore, a couple years back the state placed a higher registration cost on these vehicles as they aren't taxed at the pump. Act 211 simply ensured that the costs paid by hybrid vehicles and EVs when they register each year are included in our turnback funds that are remitted to us like the fuel tax is.

### **Act 453**

Municipalities that receive fees for providing sewage services are required to obtain an annual financial audit if the system has at least 2,000 connections. The same is true for municipalities that receive fees for providing water services if the system has at least 2,000 connections. If the municipality has between 100-2,000 connections, then we are required to obtain either an annual audit or an annual agreed-upon procedures and compilation report. This requirement has been in place for a quite a while now. We are also required to submit these reports to the Legislative Auditor. However, there has never been a punishment for not submitting these reports. In comes Act 453. Act 453 requires us to submit our reports for the water and/or sewer systems to the Legislative Auditor within 18 months after the end of the fiscal year that the report covers. IF we do not submit the report, then notice will be given to the Legislative Joint Auditing Committee who can then withhold turnback funds (in escrow) until the audit has been submitted.

### **Act 525**

Act 525 prohibits public entities from purchasing small, unmanned-aircraft systems that are manufactured or assembled by a "covered foreign entity". "Covered foreign entity is defined as, "an individual, foreign government, or a party other than an individual or foreign government: (1) on the consolidated screening list or entity list as designated by the US Secretary of Commerce; (2) Domiciled in the People's Republic of China or the Russian Federation; (3) Under the influence or control by the government of the People's Republic of China or the Russian Federation; or (4) that is a subsidiary or affiliate of an individual government or party referred to above. In short, we can no longer purchase drones that are manufactured or assembled by any individual or entity listed above. Further, on or after May 1, 2027, a public entity will be prohibited from



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operated a small, unmanned-aircraft system that is manufactured or assembled by a covered foreign entity listed above. So, if we have already purchased a drone that may fall into this category, we can keep using it until May 1, 2027.

### **Act 611**

Act 611 prohibits public entities from contracting with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of energy, fossil fuel, firearms, and ammunition and prohibits public entities from engaging in a boycott of energy, fossil fuel, firearms, and ammunition industries. HOWEVER, this prohibition does not apply if (1) the company that fails to meet the requirement above offers to provide the goods or services for at least 20% less than the lowest certifying business and (2) does not apply to contracts with a total potential value of less than \$75,000.

### **Act 818**

Act 818 amended the procurement of professional service law in regard to construction management. In short, it clarified that municipalities may make use of construction management services under ACA 19-11-801.