

As Engrossed: 3/15/91 3/27/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative J. Miller**

A BILL ACT 1040 OF 1991
HOUSE BILL 2115

For An Act To Be Entitled

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7
8 *"AN ACT TO AMEND THE ARKANSAS HIGHWAY REVENUE*
9 *DISTRIBUTION LAW TO AUTHORIZE THE ARKANSAS*
10 *DEVELOPMENT FINANCE AUTHORITY, IN COOPERATION*
11 *WITH THE ARKANSAS STATE HIGHWAY COMMISSION, TO*
12 *ISSUE HIGHWAY CONSTRUCTION AND MAINTENANCE*
13 *LIMITED OBLIGATION BONDS IN TOTAL PRINCIPAL*
14 *AMOUNTS NOT TO EXCEED \$585,000,000 IN SERIES*
15 *FROM TIME TO TIME, FOR THE PURPOSE OF*
16 *FINANCING CONSTRUCTION AND MAINTENANCE OF THE*
17 *STATE HIGHWAY SYSTEM; AUTHORIZING THE PLEDGE*
18 *OF CERTAIN REVENUES IN THE STATE HIGHWAY AND*
19 *TRANSPORTATION DEPARTMENT FUND TO THE PAYMENT*
20 *OF THE BONDS; AMENDING ARKANSAS CODE § 27-70-*
21 *209; AUTHORIZING THE GOVERNOR TO SUBMIT THE*
22 *QUESTION OF THE ISSUANCE OF BONDS TO A VOTE OF*
23 *THE ELECTORS; PRESCRIBING OTHER MATTERS*
24 *RELATING THERETO; DECLARING AN EMERGENCY AND*
25 *FOR OTHER PURPOSES."*

26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

28
29 *SECTION 1. The Arkansas Highway Revenue Distribution Law, Arkansas Code*
30 *Sections 27-70-201 et. seq., is hereby amended by adding a new Section*
31 *27-70-209 to read as follows:*

32 *"27-70-209. Highway Construction and Maintenance Bonds.*

33 *(a) The Arkansas Development Finance Authority (the 'Authority'), in*
34 *cooperation with the Arkansas State Highway Commission (the 'Commission'), is*
35 *hereby authorized to issue bonds to be known as Arkansas Development Finance*
36 *Authority Highway Construction and Maintenance Limited Obligation Bonds (the*

1 'Bonds'), in total principal amount not to exceed Five Hundred and Eighty-five
2 Million Dollars (\$585,000,000), for the purposes set forth herein. The Bonds
3 may be issued in one or more series as required subject to the conditions and
4 in compliance with the procedures set forth herein.

5 (b) The total principal amount of Bonds to be issued during any fiscal
6 biennium shall not exceed Three Hundred and Twenty Million Dollars
7 (\$320,000,000), unless the General Assembly shall, by law, have authorized a
8 greater principal amount thereof to be issued during a fiscal biennium.
9 Provided further that, before any Bonds may be issued during any fiscal
10 biennium, the Governor, after obtaining the advice of the Legislative Council
11 and in accordance with the provisions of Amendments 65 and 42 and Arkansas
12 Code Sections 19-9-601 et seq. shall, if he deems the financing to be in the
13 public interest, by proclamation, authorize the Authority and the Commission
14 to proceed with the issuance of the Bonds as provided herein.

15 (c) If the Governor shall decline or refuse to give his approval for
16 the issuance of such Bonds, and shall decline to issue a proclamation
17 approving the issuance thereof, the Governor shall promptly notify the
18 Authority and the Commission in writing, and the Authority shall not issue
19 such Bonds.

20 (d) The Bonds shall be subject to the following terms and conditions:

21 (1) The Bonds shall be issued, in series, as set forth herein,
22 in amounts sufficient to finance all or part of the costs of construction and
23 maintenance of roads and highways subject to the jurisdiction of the
24 Commission with the respective series to be designated in alphabetical order
25 and/or by the year in which issued.

26 (2) The Bonds of each series shall have such date as the
27 Authority shall determine and shall mature annually (or be subject to
28 mandatory sinking fund redemption) over a period ending not later than thirty
29 (30) years after the date of issue of each series so as to provide annual debt
30 service of approximately equal amounts (insofar as practicable) throughout the
31 term of the Bonds, as determined by the Authority. Pending the issuance of
32 Bonds hereunder, the Authority may issue temporary notes, maturing not more
33 than five (5) years from the date of issuance, to be exchanged for or paid
34 from the proceeds of Bonds at such time as the Bonds may be issued.

35 (3) The Bonds of each series shall bear interest at the rate or

1 rates determined by the Authority at the sale of the Bonds which rate shall
2 not be in excess of the maximum rate prescribed in Amendment 60 to the
3 Arkansas Constitution. Interest shall be payable at such times as the
4 Authority shall determine.

5 (4) The Bonds shall be issued in the form of bonds registered as
6 to both principal and interest without coupons; may be in such denominations;
7 and may be made exchangeable for Bonds of another form or denomination,
8 bearing the same rate of interest; may be made payable at such places within
9 or without the State; may be made subject to redemption prior to maturity in
10 such manner and for such redemption prices; and may contain such other terms
11 and conditions, all as the Authority shall determine.

12 (5) The Bonds, of each series, shall have all the qualities of
13 negotiable instruments under the laws of the State of Arkansas, subject to the
14 provisions regarding registration of ownership set forth above. The State
15 Treasurer shall establish in the State Highway and Transportation Department
16 Fund a special account known as the '1991 Highway Construction and Maintenance
17 Account' and shall deposit therein the special revenues and receipts from the
18 additional motor fuel and other taxes levied by Acts 364 and 382 of the 1991
19 Arkansas General Assembly. The Commission is authorized to pledge to the
20 repayment of the Bonds so much of the revenues of, and funds on deposit in,
21 the 1991 Highway Construction and Maintenance Account in the State Highway and
22 Transportation Department Fund and such other revenues of, and funds on
23 deposit in, the State Highway and Transportation Department Fund as are
24 necessary to insure repayment of the Bonds as they become due, and all fees
25 and other costs related to the Bonds, and to establish and maintain an
26 adequate debt service reserve fund for each series of Bonds.

27 (e) Bonds issued under this Act shall be issued for the purpose of
28 financing construction and maintenance of roads and highways subject to the
29 jurisdiction of the Commission pursuant to the plans and specifications of the
30 State Highway and Transportation Department, and the proceeds of the Bonds
31 shall be applied by the Authority upon the advice and direction of the
32 Commission for the payment of such construction and maintenance costs and the
33 costs and expenses of issuance of the Bonds.

34 (f) The Bonds shall be authorized by resolution of the Authority.
35 Each such resolution shall contain such terms, covenants, and conditions as

1 are deemed desirable, including without limitation, those pertaining to the
2 establishment and maintenance of funds and accounts, to the deposit and
3 investment of revenues and of Bond proceeds and the rights and obligations of
4 the State, its officers and officials, the Authority, and the registered
5 owners of the Bonds. The resolutions of the Authority may provide for the
6 execution and delivery by the Authority and the Commission of a trust
7 indenture or trust indentures, with a bank or banks located within or without
8 the State, containing any of the terms, covenants, and conditions referred to
9 above and other terms and conditions deemed necessary, which trust indenture
10 or trust indentures shall be binding upon the Authority, the Commission and
11 the State, and their respective officers and officials, to the extent set
12 forth in this Act.

13 (g) Each Bond shall be signed with the facsimile signatures of the
14 Chairman of the Authority and the Secretary of the Authority, and shall have
15 affixed or imprinted thereon the Seal of the Authority. Delivery of the Bonds
16 so executed shall be valid, notwithstanding any change in persons holding such
17 offices occurring after the Bonds have been executed.

18 (h) The Bonds shall be sold at public or private sale, shall have such
19 terms, and shall be executed and delivered, all as determined by the Authority
20 and in accordance with Arkansas Code Sections 15-5-301 to -316, inclusive.

21 (i) The proceeds from the sale of the Bonds, together with the
22 revenues required to be transferred from the State Highway and Transportation
23 Department Fund pursuant to subsection (k) of this Section shall be deposited,
24 held, maintained and invested pursuant to the terms of the trust indenture(s)
25 approved by resolution of the Authority.

26 (j) The Bonds shall be the limited obligations of the Authority
27 payable solely from the pledge of the special revenues and amounts received by
28 and on deposit in the State Highway and Transportation Department Fund as set
29 forth in subsection (k) hereof, and neither the full faith and credit of the
30 State of Arkansas nor the general revenues of the State are pledged to the
31 payment of debt service on the Bonds.

32 (k) (1) On or before commencement of each fiscal year, the
33 Commission and the Authority shall determine the estimated amount required for
34 payment for all of the principal, interest, premium, if any, and applicable
35 fees ('debt service') due on each series of Bonds issued and outstanding under

1 this Section during such fiscal year, and shall certify such estimated amount
2 to the Treasurer of State. The Treasurer of State shall then make transfers
3 from the 1991 Highway Construction and Maintenance Account in the State
4 Highway and Transportation Department Fund to the trustee(s) for each series
5 of Bonds, in such amounts and at such times as shall be specified in the
6 indenture(s) to pay the maturing debt service on each series of Bonds issued
7 and outstanding under this Section.

8 (2) The Treasurer of State shall make such additional transfers
9 as the Chief Fiscal Officer of the State shall certify to him as being
10 required under the indenture(s) to enable the Authority to establish and
11 thereafter maintain with the trustee(s) for each series of Bonds a reserve or
12 reserves for payment of debt service on each series of the Bonds. The
13 obligation to make transfers from the 1991 Highway Construction and
14 Maintenance Account in the State Highway and Transportation Department Fund
15 for the payment of debt service on, and a reserve for, each series of Bonds,
16 shall constitute a first charge against amounts on deposit therein. Revenues
17 or funds on deposit in the 1991 Highway Construction and Maintenance Account
18 in the State Highway and Transportation Department Fund in excess of the
19 amounts required to pay debt service on the Bonds and for a reasonable reserve
20 may be used for highway construction and maintenance projects of the
21 Commission, and for any other purpose established by the Commission.

22 (3) In the event that there are insufficient amounts in the 1991
23 Highway Construction and Maintenance Account in the State Highway and
24 Transportation Department Fund to pay the debt service on Bonds issued and
25 outstanding under this Act or to fund the necessary reserves at the required
26 level, the Treasurer of the State shall, to the extent pledged in accordance
27 with the provisions of this Act and the applicable trust indenture(s) and to
28 the extent permitted by law, transfer additional amounts from the State
29 Highway and Transportation Department Fund, excluding however, any money or
30 funds on deposit in the State Highway Special Construction Account established
31 by Arkansas Code § 27-70-103 and any money or funds on deposit in the Federal
32 Revenue Sharing State Highway Trust Fund Account established by Arkansas Code
33 § 27-70-205, to the trustee(s) for each series of Bonds as needed to pay the
34 maturing debt service on such series of Bonds or to fund the reserve(s) for
35 such series of Bonds; provided however, the Commission shall be permitted to

1 use and expend the money and funds in the State Highway and Transportation
2 Department Fund, except those amounts in the 1991 Highway Construction and
3 Maintenance Account, for the purposes otherwise specified in Arkansas Code
4 § 19-6-405 to the extent not needed as provided in this subparagraph (3).

5 (4) Monies in the 1991 Highway Construction and Maintenance
6 Account in excess of the amount necessary to insure the prompt payment of debt
7 service on the Bonds, and the establishment and maintenance of a reserve fund,
8 if any, may be used for the redemption of Bonds prior to maturity in the
9 manner and in accordance with the provisions pertaining to redemption prior to
10 maturity, as set forth in the trust indenture(s) authorizing or securing each
11 series of Bonds.

12 (l) All bonds issued under this Section, and interest thereon, shall
13 be exempt from all taxes of the State of Arkansas, including income,
14 inheritance and property taxes. The Bonds shall be eligible to secure
15 deposits of all public funds, and shall be legal for investment of municipal,
16 county, bank, fiduciary, insurance company, and trust funds.

17 (m) This Act shall constitute a contract between the State of Arkansas
18 and the registered owners of all Bonds issued hereunder which shall never be
19 impaired, and any violation of its terms, whether under purported legislative
20 authority or otherwise, shall be enjoined by the courts at the suit of any
21 bondowner or any taxpayer. The courts shall, in like suit against the
22 Authority, the Commission, the Treasurer of State, other appropriate officer
23 or official of the State, prevent a diversion of any revenues pledged in
24 accordance with this Act and shall compel the restoration of diverted
25 revenues, by injunction or mandamus. Also, and without limitation as to any
26 other appropriate remedy at law or in equity, any bondowner may, by an
27 appropriate action, including without limitation, injunction or mandamus,
28 compel the performance of all covenants and obligation of the State, its
29 officers and officials, hereunder.

30 (n) This Act shall not create any right of any character and no right
31 of any character shall arise under or pursuant to it, unless and until the
32 first series of Bonds authorized by this Section shall have been sold and
33 delivered.

34 (o) No Bonds shall be issued under this Section except by and with the
35 consent of a majority of the qualified electors of the State voting on the

1 question at a state-wide election called by proclamation at the discretion of
2 the Governor, with the concurrence of the Commission and the advice of the
3 Legislative Council. The notice of such election shall be published by the
4 Secretary of State in a newspaper of general circulation in the State at least
5 sixty (60) days prior to such election, and notice thereof shall be mailed to
6 each county board of election commissioners and the sheriff of each county at
7 least sixty (60) days prior to such election. The Governor shall not be
8 authorized to issue any proclamation for such election after March 31, 1993.

9 It shall not be necessary, in the case of the notice or proclamation for
10 the election, to publish this Act in its entirety, but the notice or
11 proclamation shall state that it is issued for the purpose of submitting to
12 the people substantially the following question:

13 Shall the Arkansas Development Finance Authority be authorized to issue
14 Highway Construction and Maintenance Limited Obligation Bonds under the
15 authority of Arkansas Code Section 27-70-209 in total principal amount
16 not to exceed Five Hundred and Eighty-five Million Dollars
17 (\$585,000,000), in series from time to time in principal amounts not to
18 exceed, without prior approval of the General Assembly, Three Hundred
19 and Twenty Million Dollars (\$320,000,000) in any fiscal biennium, which
20 Bonds shall be secured by a pledge of certain accounts and revenues of
21 the State Highway and Transportation Department Fund.

22 The title of this Act shall be the ballot title, and there shall be
23 printed on the ballot the proposition as stated above, and the
24 following:

25 FOR Issuance of Arkansas Highway Construction
26 and Maintenance Limited Obligation Bonds

27
28 AGAINST Issuance of Arkansas
29 Highway Construction and Maintenance Limited
30 Obligation Bonds.

31 The county boards of election commissioners of the several counties of
32 this State shall hold and conduct the election, and each such board is hereby
33 authorized and directed to take such action with respect to the appointment of
34 election officials and such other matters as the law requires; and the vote
35 shall be canvassed and the result thereof declared in each county by such

1 several county boards. The results shall within ten (10) days after the date
2 of the election be certified by such county boards to the Secretary of State
3 who shall forthwith tabulate all returns so received by him and certify to the
4 Governor the total vote for and against the proposition submitted as in this
5 Section provided.

6 The result of the election shall be proclaimed by the Governor by
7 publication one time in a newspaper published in the City of Little Rock,
8 Arkansas, and the results as proclaimed shall be conclusive unless attacked in
9 the courts within thirty (30) days after the date of such publication.

10 (p) If a majority of the qualified electors voting on the question
11 shall vote for the issuance of the Bonds, the Authority shall proceed with the
12 sale and the issuance of the Bonds in the amounts and at the times as provided
13 in this Act. If a majority of the qualified electors voting on the question
14 vote against the issuance of the Bonds, none of the Bonds authorized by this
15 Act shall ever be sold or issued, and all provisions of this Act shall be of
16 no further effect.

17 (q) Any moneys held in any fund in the State Treasury created under
18 this Act shall be invested by the State Board of Finance to the full extent
19 practicable pending disbursement for the purposes intended. Notwithstanding
20 any other provision of law, such investments shall be in accordance with the
21 terms of the resolution or trust indenture authorizing or securing the series
22 of Bonds to which said fund appertains to the extent the terms of such
23 resolution or trust indenture are applicable."

24

25 SECTION 2. Arkansas Code Section 19-6-405 is hereby amended to read as
26 follows:

27 "19-6-405. Highway and Transportation Department Fund.

28 The State Highway and Transportation Department Fund shall consist of
29 that part of the special revenues as specified in subdivisions (2), (3), (4),
30 (22), (81), (105), (106), (107), and (123) of § 19-6-301, known as 'highway
31 revenue', as distributed under § 27-70-201 et seq., which is the Arkansas
32 Highway Revenue Distribution Law, and § 27-70-103 and § 20-72-301 et seq. ;
33 those special revenues specified in subdivision (10) of § 19-6-301; fifty
34 percent (50%) of subdivision (26) of § 19-6-301; Federal Revenue Sharing funds
35 as set out in § 19-5-1005; and any federal funds which may become available,

1 there to be used for the maintenance operation, and improvement required by
2 the State Highway and Transportation Department in carrying out the functions,
3 powers, and duties as set out in the Arkansas Constitution, Amendment 42,
4 §§ 27-65-102 - 27-65-107, 27-65-110, 27-65-122, 27-65-124, and 27-70-209, and
5 the other laws of this State prescribing the powers and duties of the State
6 Highway and Transportation Department and the State Highway Commission."

7
8 SECTION 3. If, for any reason any Section or provision of this Act
9 shall be held to be unconstitutional or invalid for any reason, such holding
10 shall not affect the remainder of this Act, but this Act, insofar as it is not
11 in conflict with the Constitution of this State or the Constitution of the
12 United States, shall be permitted to stand, and the various provisions of this
13 Act are hereby declared to be severable for that purpose. Any case involving
14 the validity of this Act or involving the Bonds issued hereunder, shall be
15 deemed of public interest and shall be advanced by all courts and heard as a
16 preferred cause, and all appeals from judgments or decrees rendered in such
17 cases must be taken within thirty (30) days after rendition of such judgment
18 or decree.

19
20 SECTION 4. (a) This Act shall be liberally construed to accomplish the
21 purposes thereof. This Act shall constitute the sole authority necessary to
22 accomplish the purposes hereof, and to this end it shall not be necessary that
23 the provisions of other laws pertaining to the development of public
24 facilities and properties and the financing thereof be complied with.

25 (b) This Act shall be interpreted to supplement existing laws
26 conferring rights and powers upon the Authority and the Commission, and the
27 rights and powers set forth herein shall be regarded as alternative methods
28 for the accomplishment of the purposes of this Act.

29
30 SECTION 5. Section 5(1)(C) of Act 364 of 1991 is hereby amended to read
31 as follows:

32 "(C) Seventy percent (70%) of the amount thereof to a special account
33 in the State Highway and Transportation Department Fund to be designated the
34 '1991 Highway Construction and Maintenance Account'."

35

1 SECTION 6. Section 5(2) of Act 364 of 1991 is hereby amended to read as
2 follows:

3 "(2) The funds in the 1991 Highway Construction and Maintenance
4 Account shall be held, managed and used in the same manner and for the same
5 purposes as set out in the Arkansas Highway Revenue Distribution Law, §27-70-
6 201 et seq., excluding however, Section 27-70-206; provided that, in keeping
7 with the spirit of Section 105 of Public Law 97-424 and the Arkansas State
8 Highway Commission's goals for encouraging the participation of Disadvantaged
9 Business Enterprises in entering into and performing contracts with the
10 Commission, including the purchasing of supplies and equipment by the
11 Commission and for the construction, reconstruction and maintenance of
12 highways and bridges in the State Highway System, the Arkansas State Highway
13 Commission is authorized to expend up to ten percent (10%) of the total funds
14 and revenues available and disbursed to the Commission pursuant to this Act
15 for the purposes of achieving those goals."
16

17 SECTION 7. Section 5(1)(C) of Act 382 of 1991 is hereby amended to read
18 as follows:

19 "(C) Seventy percent (70%) of the amount thereof to a special account
20 in the State Highway and Transportation Department Fund to be designated the
21 '1991 Highway Construction and Maintenance Account'."
22

23 SECTION 8. Section 5(2) of Act 382 of 1991 is hereby amended to read as
24 follows:

25 "(2) The funds in the 1991 Highway Construction and Maintenance
26 Account shall be held, managed and used in the same manner and for the same
27 purposes as set out in the Arkansas Highway Revenue Distribution Law, §27-70-
28 201 et seq., excluding however, Section 27-70-206; provided that, in keeping
29 with the spirit of Section 105 of Public Law 97-424 and the Arkansas State
30 Highway and Transportation Commission's goals for encouraging the
31 participation of Disadvantaged Business Enterprises in entering into and
32 performing contracts with the Commission, including the purchasing of supplies
33 and equipment by the Commission and for the construction, reconstruction and
34 maintenance of highways and bridges in the State Highway System, the Arkansas
35 State Highway Commission is authorized to expend up to ten percent (10%) of

1 the total funds and revenues available and disbursed to the Commission
2 pursuant to this Act for the purposes of achieving those goals."

3

4 SECTION 9. All provisions of this act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

7

8 SECTION 10. All laws and parts of laws in conflict with this act are
9 hereby repealed.

10

11 SECTION 11. EMERGENCY. It has been found and it is hereby declared by
12 the General Assembly that there is an immediate need for the construction and
13 repair of the State Highway System. For these reasons, it is declared
14 necessary for the preservation of the public peace, health, and safety that
15 this Act become effective without delay. It is, therefore, declared that an
16 emergency exists, and this Act shall take effect from the date of its passage
17 and approval.

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19 /s/ John Miller

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21 APPROVED: 4/8/91

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