

*.As Engrossed: 3/11/91, 3/13/91, 3/14/91, 3/15/91*

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senators Gibson and Bookout**

**A BILL ACT 1239 OF 1991**  
**SENATE BILL 734**

**For An Act To Be Entitled**

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

22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. The Arkansas Highway Revenue Distribution Law, Arkansas Code  
26 Sections 27-70-201 et. seq., is hereby amended by adding a new Section  
27 27-70-209 to read as follows:

28 "27-70-209. Highway Construction and Maintenance Bonds.

29 (a) The Arkansas Development Finance Authority (the 'Authority'), in  
30 cooperation with the Arkansas State Highway Commission (the 'Commission'), is  
31 hereby authorized to issue bonds to be known as Arkansas Development Finance  
32 Authority Highway Construction and Maintenance Limited Obligation Bonds (the  
33 'Bonds'), in total principal amount not to exceed Five Hundred and Eighty-five  
34 Million Dollars (\$585,000,000), for the purposes set forth herein. The Bonds  
35 may be issued in one or more series as required subject to the conditions and  
36 in compliance with the procedures set forth herein.

1           (b)    The total principal amount of Bonds to be issued during any fiscal  
2 biennium shall not exceed Three Hundred and Twenty Million Dollars  
3 (\$320,000,000), unless the General Assembly shall, by law, have authorized a  
4 greater principal amount thereof to be issued during a fiscal biennium.  
5 Provided further that, before any Bonds may be issued during any fiscal  
6 biennium, the Governor, after obtaining the advice of the Legislative Council  
7 and in accordance with the provisions of Amendments 65 and 42 and Arkansas  
8 Code Sections 19-9-601 et seq. shall, if he deems the financing to be in the  
9 public interest, by proclamation, authorize the Authority and the Commission  
10 to proceed with the issuance of the Bonds as provided herein.

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

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

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

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

31               (3)    The Bonds of each series shall bear interest at the rate or  
32 rates determined by the Authority at the sale of the Bonds which rate shall  
33 not be in excess of the maximum rate prescribed in Amendment 60 to the  
34 Arkansas Constitution. Interest shall be payable at such times as the  
35 Authority shall determine.

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

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

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

30           (f)    The Bonds shall be authorized by resolution of the Authority.  
31 Each such resolution shall contain such terms, covenants, and conditions as  
32 are deemed desirable, including without limitation, those pertaining to the  
33 establishment and maintenance of funds and accounts, to the deposit and  
34 investment of revenues and of Bond proceeds and the rights and obligations of  
35 the State, its officers and officials, the Authority, and the registered

1 owners of the Bonds. The resolutions of the Authority may provide for the  
2 execution and delivery by the Authority and the Commission of a trust  
3 indenture or trust indentures, with a bank or banks located within or without  
4 the State, containing any of the terms, covenants, and conditions referred to  
5 above and other terms and conditions deemed necessary, which trust indenture  
6 or trust indentures shall be binding upon the Authority, the Commission and  
7 the State, and their respective officers and officials, to the extent set  
8 forth in this Act.

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

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

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

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

28 (k) (1) On or before commencement of each fiscal year, the  
29 Commission and the Authority shall determine the estimated amount required for  
30 payment for all of the principal, interest, premium, if any, and applicable  
31 fees ('debt service') due on each series of Bonds issued and outstanding under  
32 this Section during such fiscal year, and shall certify such estimated amount  
33 to the Treasurer of State. The Treasurer of State shall then make transfers  
34 from the 1991 Highway Construction and Maintenance Account in the State  
35 Highway and Transportation Department Fund to the trustee(s) for each series

1 of Bonds, in such amounts and at such times as shall be specified in the  
2 indenture(s) to pay the maturing debt service on each series of Bonds issued  
3 and outstanding under this Section.

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

18           (3) In the event that there are insufficient amounts in the 1991  
19 Highway Construction and Maintenance Account in the State Highway and  
20 Transportation Department Fund to pay the debt service on Bonds issued and  
21 outstanding under this Act or to fund the necessary reserves at the required  
22 level, the Treasurer of the State shall, to the extent pledged in accordance  
23 with the provisions of this Act and the applicable trust indenture(s) and to  
24 the extent permitted by law, transfer additional amounts from the State  
25 Highway and Transportation Department Fund, excluding however, any money or  
26 funds on deposit in the State Highway Special Construction Account established  
27 by Arkansas Code § 27-70-103 and any money or funds on deposit in the Federal  
28 Revenue Sharing State Highway Trust Fund Account established by Arkansas Code  
29 § 27-70-205, to the trustee(s) for each series of Bonds as needed to pay the  
30 maturing debt service on such series of Bonds or to fund the reserve(s) for  
31 such series of Bonds; provided however, the Commission shall be permitted to  
32 use and expend the money and funds in the State Highway and Transportation  
33 Department Fund, except those amounts in the 1991 Highway Construction and  
34 Maintenance Account, for the purposes otherwise specified in Arkansas Code  
35 § 19-6-405 to the extent not needed as provided in this subparagraph (3).

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

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

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

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

30 (o) No Bonds shall be issued under this Section except by and with the  
31 consent of a majority of the qualified electors of the State voting on the  
32 question at a state-wide election called by proclamation at the discretion of  
33 the Governor, with the concurrence of the Commission and the advice of the  
34 Legislative Council. The notice of such election shall be published by the  
35 Secretary of State in a newspaper of general circulation in the State at least

1 sixty (60) days prior to such election, and notice thereof shall be mailed to  
2 each county board of election commissioners and the sheriff of each county at  
3 least sixty (60) days prior to such election. The Governor shall not be  
4 authorized to issue any proclamation for such election after March 31, 1993.

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

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

18 The title of this Act shall be the ballot title, and there shall be  
19 printed on the ballot the proposition as stated above, and the  
20 following:

21 FOR Issuance of Arkansas Highway Construction  
22 and Maintenance Limited Obligation Bonds . . . .

23  
24 AGAINST Issuance of Arkansas  
25 Highway Construction and Maintenance Limited  
26 Obligation Bonds. . . . .

27 The county boards of election commissioners of the several counties of  
28 this State shall hold and conduct the election, and each such board is hereby  
29 authorized and directed to take such action with respect to the appointment of  
30 election officials and such other matters as the law requires; and the vote  
31 shall be canvassed and the result thereof declared in each county by such  
32 several county boards. The results shall within ten (10) days after the date  
33 of the election be certified by such county boards to the Secretary of State  
34 who shall forthwith tabulate all returns so received by him and certify to the  
35 Governor the total vote for and against the proposition submitted as in this

1 Section provided.

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

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

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

20

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

23 "19-6-405. Highway and Transportation Department Fund.

24 The State Highway and Transportation Department Fund shall consist of  
25 that part of the special revenues as specified in subdivisions (2), (3), (4),  
26 (22), (81), (105), (106), (107), and (123) of § 19-6-301, known as 'highway  
27 revenue', as distributed under § 27-70-201 et seq., which is the Arkansas  
28 Highway Revenue Distribution Law, and § 27-70-103 and § 20-72-301 et seq. ;  
29 those special revenues specified in subdivision (10) of § 19-6-301; fifty  
30 percent (50%) of subdivision (26) of § 19-6-301; Federal Revenue Sharing funds  
31 as set out in § 19-5-1005; and any federal funds which may become available,  
32 there to be used for the maintenance operation, and improvement required by  
33 the State Highway and Transportation Department in carrying out the functions,  
34 powers, and duties as set out in the Arkansas Constitution, Amendment 42,  
35 §§ 27-65-102 - 27-65-107, 27-65-110, 27-65-122, 27-65-124, and 27-70-209, and



1 the other laws of this State prescribing the powers and duties of the State  
2 Highway and Transportation Department and the State Highway Commission."

3

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

15

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

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

25

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

28 "(C) Seventy percent (70%) of the amount thereof to a special account  
29 in the State Highway and Transportation Department Fund to be designated the  
30 '1991 Highway Construction and Maintenance Account'."

31

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

34 "(2) The funds in the 1991 Highway Construction and Maintenance Account  
35 shall be held, managed and used in the same manner and for the same purposes

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

12

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

15 "(C) Seventy percent (70%) of the amount thereof to a special account  
16 in the State Highway and Transportation Department Fund to be designated the  
17 '1991 Highway Construction and Maintenance Account'."

18

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

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

34

35 SECTION 9. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
2 Revision Commission shall incorporate the same in the Code.

3

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

6

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

14

/s/Gibson et al

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APPROVED: 4-10-91

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