

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 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

Act 494 of 2003  
HOUSE BILL 1613

5 By: Representative Hutchinson  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AUTHORIZE THE ARKANSAS DEVELOPMENT  
10 FINANCE AUTHORITY TO ENTER INTO AN INTEREST RATE  
11 EXCHANGE AGREEMENT OR SIMILAR AGREEMENT OR  
12 CONTRACT; TO ALLOW THE ARKANSAS DEVELOPMENT  
13 FINANCE AUTHORITY TO USE OTHER FINANCING  
14 VEHICLES; AND FOR OTHER PURPOSES.  
15

## Subtitle

16 AN ACT TO AUTHORIZE THE ARKANSAS  
17 DEVELOPMENT FINANCE AUTHORITY TO ENTER  
18 INTO AN INTEREST RATE EXCHANGE AGREEMENT  
19 OR SIMILAR AGREEMENT OR CONTRACT.  
20  
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 15-5-103, concerning definitions under the  
26 Arkansas Development Finance Authority Act, is amended to add new  
27 subdivisions to read as follows:

28 (20) "Aggregate security value of the contract" means the amount,  
29 determined by the party identified in, and in the manner identified in, an  
30 interest rate exchange agreement or similar agreement or contract, that a  
31 proposed assignee would pay in United States currency to the Arkansas  
32 Development Finance Authority to assume the obligations of the authority  
33 under the interest rate exchange agreement or similar agreement or contract;

34 (21) "Counterparty" means the party entering into the interest rate  
35 exchange agreement or similar agreement or contract with the authority;

36 (22) "Interest rate exchange agreement or similar agreement or



1 contract” means a written contract entered into by the authority with one or  
 2 more counterparties, that:

3 (A) Is related to the issuance of bonds by the authority or to  
 4 bonds previously issued by the authority that are outstanding on the date of  
 5 execution of the contract;

6 (B) Provides for an exchange of payments, denominated in United  
 7 States currency, that is based upon fixed or variable interest rates; and

8 (C) Includes contracts and options related to any exchange of  
 9 payments as determined by the authority under its rulemaking authority under  
 10 § 5-15-317.

11  
 12 SECTION 2. Arkansas Code § 15-5-207(b), concerning the rights, powers,  
 13 privileges, and duties of the Arkansas Development Finance Authority, is  
 14 amended to add a new subsection which reads as follows:

15 (31) To enter into an interest rate exchange agreement or  
 16 similar agreement or contract.

17  
 18 SECTION 3. Arkansas Code § 15-5-309(a) and (b), concerning authorizing  
 19 resolutions and trust indentures issued by the Arkansas Development Finance  
 20 Authority, are amended to read as follows:

21 (a) Bonds issued in accordance herewith shall be authorized by  
 22 resolution of the Arkansas Development Finance Authority. The bonds may be  
 23 issued as registered bonds or coupon bonds, payable to bearer, and, if coupon  
 24 bonds, may be registerable as to principal only or as to principal and  
 25 interest and may be exchangeable for bonds of another denomination or in  
 26 another form. The bonds may be in such form and denominations, may have such  
 27 date or dates, may be stated to mature at such time or times, and may bear  
 28 interest payable at such times and at such rate or rates, including variable  
 29 rates, or be zero coupon or capital appreciation bonds. The bonds may be  
 30 payable at such places within or without the state, may be subject to such  
 31 terms of redemption in advance of maturity at such prices, and may contain  
 32 such terms and conditions, all as the authority shall determine. The bonds  
 33 shall be denominated in the currency of the United States, unless the  
 34 authority in its discretion determines that denominating the bonds in the  
 35 currency of a foreign country is in the best interests of the authority. In  
 36 that case, the bonds may be denominated in the currency of a foreign country.

1 The bonds shall have all the qualities of and shall be deemed to be  
 2 negotiable instruments under the laws of the State of Arkansas, subject to  
 3 provisions as to registration as set forth above. The authorizing resolution  
 4 may contain any other terms, covenants, and conditions that the authority  
 5 deems reasonable and desirable, including, without limitation, those  
 6 pertaining to the maintenance of various funds and reserves, the nature and  
 7 extent of any security for payment of the bonds, the custody and application  
 8 of the proceeds of the bonds, the collection and disposition of revenues, the  
 9 investing for authorized purposes, and the rights, duties, and obligations of  
 10 the authority and the holders and registered owners of the bonds.

11 (b) The authorizing resolution may provide for the execution of a  
 12 trust indenture between the authority and any financial institution within or  
 13 without the State of Arkansas. The trust indenture may contain any terms,  
 14 covenants, and conditions that are deemed desirable by the authority,  
 15 including, without limitation, those pertaining to the maintenance of various  
 16 funds and reserves, the nature and extent of any security for the payment of  
 17 the bonds, the custody and application of the proceeds of the bonds, the  
 18 collection and disposition of revenues, the investing and reinvesting of any  
 19 moneys during periods not needed for authorized purposes, credit enhancement  
 20 and liquidity features, and the rights, duties, and obligations of the  
 21 authority and the holders and registered owners of the bonds.

22

23 SECTION 4. Arkansas Code Title 15, Chapter 5, Subchapter 3 is amended  
 24 to add a new section to read as follows:

25 15-5-317. Power to enter into an interest rate exchange agreement or  
 26 similar agreement or contract.

27 (a) In connection with bonds issued before, on or after the effective  
 28 date of this act, Arkansas Development Finance Authority shall have the power  
 29 to:

30 (1)(A) Enter into an interest rate exchange agreement or similar  
 31 agreement or contract with any person, on a competitive or negotiated basis,  
 32 under the terms and conditions as the authority shall determine.

33 (B) The terms and conditions of the agreements under  
 34 subdivision (a)(1)(A) of this section in which the authority may enter shall  
 35 include terms as to default or early termination and indemnification by the  
 36 authority or any other party to the agreement for loss of benefits as a

1 result of default or early termination;

2 (2) Procure insurance, letters of credit or other credit  
 3 enhancement with respect to an interest rate exchange agreement or  
 4 similar agreement or contract;

5 (3) Provide security for the payment or performance of its  
 6 obligations with respect to an interest rate exchange agreement or similar  
 7 agreement or contract in accordance with existing state law governing  
 8 security for its bonds; and

9 (4) Modify, amend, or replace an interest rate exchange  
 10 agreement or similar agreement or contract.

11 (b) Any interest rate exchange agreement or similar agreement or  
 12 contract entered into under this section is subject to the following  
 13 limitations:

14 (1) The authority shall not enter into an interest rate  
 15 exchange agreement or similar agreement or contract unless:

16 (A)(i) The counterparty to the agreement has  
 17 obtained a credit rating from at least one (1) nationally recognized  
 18 statistical rating agency that is at least equal to the lowest  
 19 investment grade rating of any of the authority's bonds by the rating  
 20 agency; or

21 (ii) The payment obligations of the  
 22 counterparty are unconditionally guaranteed by an entity with the  
 23 credit ratings stated in this section; and

24 (B)(i) The written contract evidencing the agreement  
 25 provides that if the rating of the counterparty or of the guarantor of  
 26 the counterparty falls below the rating level stated in subdivision  
 27 (b)(1) of this section during the term of the agreement, the obligation  
 28 of the counterparty or guarantor to pay the aggregate security value of  
 29 the contract to the authority shall be collateralized by the  
 30 counterparty's or guarantor's investment obligations to the extent  
 31 required by the authority's guidelines adopted under this section; and

32 (ii) The authority files in its records a  
 33 finding by independent financial advisors to the authority that the  
 34 terms and conditions of the interest rate exchange agreement or similar  
 35 agreement or contract reflect a fair market value, regardless of  
 36 whether the agreement was solicited on a competitive or negotiated

1 basis.

2 (c) Prior to authorizing the approval of any contract for  
3 interest rate exchange agreement or similar agreement, the authority  
4 shall adopt guidelines for the use of an interest rate exchange  
5 agreement or similar agreement or contract that shall include the  
6 following:

7 (1) The methods by which those agreements are to be  
8 solicited and procured;

9 (2) The standards and procedures for counterparty  
10 selection;

11 (3) The aspects of risk exposure associated with those  
12 agreements;

13 (4) The types of agreements to be entered into;

14 (5) The collateralization requirements imposed upon a  
15 counterparty or guarantor in the event of a rating agency downgrade;  
16 and

17 (6) The long-term implications associated with entering  
18 into those agreements, such as:

19 (A) Costs of borrowing;

20 (B) Historical trends;

21 (C) Any potential impact on the future ability to  
22 redeem bonds, including opportunities to refund related debt  
23 obligations; or

24 (D) Any similar consideration.

25 (d) The authority may amend the guidelines for an interest rate  
26 exchange agreement or similar agreement or contract and shall make the  
27 guidelines available for public inspection at the offices of the  
28 authority.

29 (e) The authority shall disclose each interest rate exchange  
30 agreement or similar agreement or contract to which it is a party. to  
31 the Governor, and to the Arkansas Legislative Council, pursuant to the  
32 authority's reporting requirement under § 15-5-512.

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34 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly of the State of Arkansas that current Arkansas law does not  
36 specifically provide the terms and conditions under which the Arkansas

1 Development Finance Authority may enter into an interest rate exchange  
2 agreement or similar agreement or contract; that there is an urgent need to  
3 authorize the Arkansas Development Finance Authority to enter into interest  
4 rate exchange agreements or similar agreements or contracts to allow it to  
5 take advantage of innovative financing structures; that, by entering into  
6 these agreements, the Arkansas Development Finance Authority will be able to  
7 more effectively assist Arkansas residents in retaining existing employment  
8 and reducing unemployment in all phases of agricultural business and  
9 industrial enterprises, in eliminating the shortage of safe and affordable  
10 housing, in developing reliable, affordable, efficient, and environmentally  
11 compatible sources of energy for all types of public and private consumption;  
12 and that this act is immediately necessary because the financial marketplace  
13 is very volatile, and immediate enactment will allow the Arkansas Development  
14 Finance Authority to take advantage of current, favorable market trends in  
15 order to compete with other financial market participants. Therefore, an  
16 emergency is declared to exist and this act being immediately necessary for  
17 the preservation of the public peace, health, and safety shall become  
18 effective on:

- 19 (1) The date of its approval by the Governor;
- 20 (2) If the bill is neither approved nor vetoed by the Governor,  
21 the expiration of the period of time during which the Governor may veto the  
22 bill; or
- 23 (3) If the bill is vetoed by the Governor and the veto is  
24 overridden, the date the last house overrides the veto.

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27 **APPROVED: 3/18/2003**  
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