

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.
Act 1282 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

SENATE BILL 1137

5 By: Senator Baker
6 By: Representative Maloch
7

For An Act To Be Entitled

10 AN ACT TO AUTHORIZE THE ARKANSAS DEVELOPMENT
11 FINANCE AUTHORITY TO ISSUE STATE OF ARKANSAS
12 HIGHER EDUCATION GENERAL OBLIGATION BONDS FOR
13 TECHNOLOGY AND FACILITY IMPROVEMENTS FOR STATE
14 INSTITUTIONS OF HIGHER EDUCATION; TO REFUND
15 CERTAIN OUTSTANDING BONDS; TO PROVIDE FOR A
16 STATEWIDE ELECTION ON THE ISSUANCE OF BONDS; AND
17 FOR OTHER PURPOSES.

Subtitle

18
19 ARKANSAS HIGHER EDUCATION TECHNOLOGY AND
20 FACILITY IMPROVEMENT ACT OF 2005.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code, Title 6, Chapter 62 is amended to add a new
27 subchapter as follows:

28 6-62-1101. Title.

29 This subchapter may be referred to and cited as the "Arkansas Higher
30 Education Technology and Facility Improvement Act of 2005".

31
32 6-62-1102. Legislative findings.

33 The General Assembly finds that:

34 (1) Expanded availability of higher educational opportunities
35 for families in this state with school-age children has become increasingly



1 necessary in order to preserve and protect the health, welfare, and
 2 prosperity of this state and its citizens;

3 (2) The increasing competitiveness and technological
 4 sophistication of today's products, services, and markets and the growing
 5 importance of our dynamic economy require a highly educated and well-trained
 6 work force in order for this state to preserve, protect, and promote
 7 employment opportunities;

8 (3) A strong system of higher education has been and will
 9 continue to be not only a wellspring for the enhancement of this state's
 10 cultural well-being, but also a substantial contributing factor to the growth
 11 of this state's economy by stimulating the development of new products and
 12 services;

13 (4) There is a growing need for this state to undertake projects
 14 to upgrade and expand this state's higher education technology equipment and
 15 to improve this state's higher education and physical plant; and

16 (5) The public policies and responsibilities of this state as
 17 described in this section cannot be fully obtained without the use of public
 18 financing and that the public financing can only be provided by the adoption
 19 of this subchapter by the General Assembly and its approval by the electors
 20 of the State of Arkansas.

21
 22 6-62-1103. Definitions.

23 As used in this subchapter:

24 (1) "Athletic facilities" means facilities used primarily for
 25 intercollegiate or intramural sports;

26 (2) "Bonds" means the State of Arkansas Higher Education General
 27 Obligation Bonds as authorized in this subchapter;

28 (3) "Debt service" means all amounts required for the payment of
 29 principal, interest, and premium, if any, due with respect to the bonds in
 30 any fiscal year, along with all associated costs, including the fees and
 31 costs of paying agents and trustees, remarketing agent fees, credit
 32 enhancement costs, arbitrage rebate costs, administrative costs, and other
 33 amounts necessary in connection with the repayment of and security for the
 34 bonds;

35 (4) "Develop" or "development" means the construction, repair,
 36 renovation, design, expansion, improvement, acquisition, installation, or

1 equipping of any lands, buildings, improvements, machinery, equipment, or
2 other properties of whatever nature, real, personal, or mixed;

3 (5) "Facility improvement projects" means any lands, buildings,
4 improvements, machinery, equipment, or other property, real, personal, or
5 mixed, or any combination of property developed in pursuance of all or any of
6 the purposes of this subchapter as promulgated by the rules established by
7 the Arkansas Higher Education Coordinating Board which are not technology
8 projects as defined in this subchapter;

9 (6) "General revenues" means the general revenues defined in
10 § 19-6-201;

11 (7) "Project costs" means all or any part of the costs of
12 developing any projects under this subchapter, costs of refunding bonds
13 issued under this subchapter or under the Arkansas College Savings Bond Act
14 of 1989, § 6-62-701 et seq., costs incidental or appropriate to the projects
15 or bonds, and costs incidental or appropriate to the financing of the
16 projects or bonds, including, without limitation, costs of issuance of the
17 bonds, capitalized interest, liquidity facility fees, appropriate reserves,
18 credit enhancement, bond insurance or surety bond premiums, the
19 administrative fees of the issuer, and fees and costs for engineering, legal,
20 and other professional, administrative, and consultant services;

21 (8) "State institution of higher education" means any public
22 university, college, technical college, or community college established or
23 authorized by the General Assembly; and

24 (9) "Technology projects" means any lands, buildings,
25 improvements, machinery, equipment, or other property, real, personal,
26 tangible or intangible, or mixed, or any combination thereof, developed in
27 pursuance of all or any of the purposes of this subchapter but specifically
28 for the purpose of upgrading or expanding this state's higher education
29 technology equipment and facilities as promulgated by the rules established
30 by the Arkansas Higher Education Coordinating Board.

31
32 6-62-1104. Power and duties.

33 (a) Before any bonds may be issued during a fiscal biennium, except
34 for refunding purposes, the Arkansas Higher Education Coordinating Board
35 shall submit to the Governor a written plan for technology and facility
36 improvement projects to be funded with the proceeds derived from the sale of

1 the bonds, the need for the projects, the estimated benefits of the projects,
2 and the anticipated debt service requirements for the bonds.

3 (b)(1) Upon receipt of the plan, the Governor shall confer with the
4 Chief Fiscal Officer of the State concerning the amount and availability of
5 unrestricted funds in the General Improvement Fund that would be used to meet
6 the debt service requirements.

7 (2) The Chief Fiscal Officer of the State shall determine
8 whether the annual amount of the net general revenues required to be set
9 aside from general revenues for payment of the remaining debt service
10 requirements in connection with the bonds to be issued under this subchapter
11 during either year of the fiscal biennium in which the bonds are to be
12 issued, would work undue hardship upon any agency or program supported from
13 general revenues under the provisions of the Revenue Stabilization Law, § 19-
14 5-101 et seq.

15 (c) After conferring with the Chief Fiscal Officer of the State
16 pursuant to subsection (b) of this section, if the Governor determines that
17 issuing bonds under this subchapter is in the public interest, the Governor
18 shall authorize by proclamation the Arkansas Higher Education Coordinating
19 Board and the Arkansas Development Finance Authority to proceed with the
20 issuance of the bonds under this subchapter.

21 (d) The Arkansas Development Finance Authority and the Arkansas Higher
22 Education Coordinating Board, in addition to and not in replacement or
23 limitation of powers conferred under other laws, shall each have the power
24 under this subchapter to:

25 (1) Make available bond proceeds and investment earnings on the
26 bonds proceeds to state institutions of higher education for payment of
27 project costs in accordance with this subchapter;

28 (2) Enter into any and all contracts necessary or convenient for
29 the exercise of the powers or implementation of the purposes set forth in
30 this subchapter;

31 (3) Require audits or other periodic reports of any or all
32 accounts related to construction, operation, or maintenance of any projects
33 funded by this subchapter;

34 (4) Take reasonable actions to ensure that debt service
35 requirements are met; and

36 (5) Take other action as may be appropriate to accomplish the

1 purposes of this subchapter.

2 (e) The Arkansas Development Finance Authority and the Arkansas Higher
3 Education Coordinating Board are each authorized to promulgate rules with
4 respect to their powers and duties pursuant to this subchapter.

5 (f) No member of the Arkansas Development Finance Authority or the
6 Arkansas Higher Education Coordinating Board shall be liable personally for
7 any reason arising from the issuance of bonds pursuant to this subchapter
8 unless the person shall have acted with corrupt intent.

9
10 6-62-1105. Authorization – Purposes.

11 The Arkansas Development Finance Authority, on behalf of the State of
12 Arkansas, is authorized, subject to the approval of the voters in a statewide
13 election, to issue bonds to be known as "State of Arkansas Higher Education
14 General Obligation Bonds", in a total principal amount not to exceed two
15 hundred fifty million dollars (\$250,000,000) for the purpose of financing the
16 development of technology projects and facility improvement projects for
17 state institutions of higher education and for the purpose of refunding bonds
18 issued under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et
19 seq.

20
21 6-62-1106. Bonds – Debt service limitation.

22 The total principal amount of bonds outstanding under this subchapter
23 and under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.
24 shall not have combined scheduled debt service payments in excess of twenty-
25 four million dollars (\$24,000,000) in any one (1) fiscal year.

26
27 6-62-1107. Projects to be financed.

28 The proceeds of bonds issued under this subchapter for nonrefunding
29 purposes shall be used to finance the development of technology projects and
30 facility improvement projects. However, none of the projects shall be
31 primarily for athletic facilities.

32
33 6-62-1108. Election.

34 (a)(1) No bonds shall be issued under this subchapter, except as
35 otherwise provided in this subchapter, unless the issuance of bonds and the
36 pledge of the full faith and credit of the State of Arkansas has been

1 approved by a majority of the qualified electors of this state voting on the
2 question at a statewide election called by proclamation of the Governor.

3 (2) The election may be in conjunction with a general election
4 or it may be a special election.

5 (3) Notice of the election shall be:

6 (A) Published by the Secretary of State in a newspaper of
7 general circulation in this state at least thirty (30) days prior to the
8 election; and

9 (B) Mailed to each county board of election commissioners
10 at least sixty (60) days prior to the election.

11 (b) The notice of election shall state that the election is to be held
12 for the purpose of submitting to the people the following proposition, in
13 substantially the following form:

14 “Authorizing the Arkansas Development Finance Authority to issue State
15 of Arkansas Higher Education General Obligation Bonds (the “bonds”) in a
16 total principal amount not to exceed two hundred fifty million dollars
17 (\$250,000,000) in one (1) or more series from time to time for the purpose of
18 financing the cost of developing technology and facility improvement projects
19 for state institutions of higher education and financing the cost of
20 refunding bonds issued under the Arkansas College Savings Bond Act of 1989.
21 However, that the outstanding principal amount of bonds issued under the
22 Arkansas Higher Education Technology and Facility Improvement Act of 2005 and
23 the Arkansas College Savings Bond Act of 1989 shall not have scheduled debt
24 service payments on a combined basis in excess of twenty-four million dollars
25 (\$24,000,000) in any one (1) fiscal year.

26 The bonds shall be general obligations of the State of Arkansas,
27 payable from general revenues of the state and also secured by the full faith
28 and credit of the State of Arkansas, including its general revenues. The
29 bonds shall be issued pursuant to the authority of and the terms set forth in
30 the Arkansas Higher Education Technology and Facility Improvement Act of
31 2005.”

32 (c) The ballot title shall be “Issuance of State of Arkansas Higher
33 Education General Obligation Bonds and Pledge of Full Faith and Credit of the
34 State of Arkansas”. On each ballot there shall be printed the title, the
35 proposition set forth in § 6-62-1108(b), and the following:

36 “FOR issuance of State of Arkansas Higher Education General Obligation

1 Bonds and Pledge the Full Faith and Credit of the State of Arkansas.”

2 “AGAINST issuance of State of Arkansas Higher Education General
3 Obligation Bonds and Pledge the Full Faith and Credit of the State of
4 Arkansas.”

5 (d)(1) The county boards of election commissioners in each of the
6 counties of this state shall hold and conduct the election.

7 (2) Each county board of election commissioners shall take
8 necessary action with respect to the appointment of election officials and
9 other matters as required by law.

10 (3) The vote shall be canvassed and the result of the vote
11 declared in each county by the board.

12 (4) Within ten (10) days after the date of the election, the
13 results shall be certified by the boards to the Secretary of State who shall
14 tabulate all returns received and certify to the Governor the total vote for
15 and against the proposition submitted pursuant to this subchapter.

16 (e) The results of the election shall be proclaimed by the Governor by
17 the publication of the proclamation one (1) time in a newspaper of general
18 circulation in this state. The results as proclaimed shall be conclusive
19 unless a complaint is filed within thirty (30) days after the date of the
20 publication in the Pulaski County Circuit Court challenging the results.

21 (f)(1) If a majority of the qualified electors voting on the
22 proposition vote in favor of the issuance of the bonds, then the Arkansas
23 Development Finance Authority and the Arkansas Higher Education Coordinating
24 Board shall proceed with the issuance of bonds in the manner and on the terms
25 set forth in this subchapter.

26 (2) If a majority of the qualified electors voting on the
27 proposition vote against the issuance of the bonds, none of the bonds
28 authorized by this subchapter shall be issued.

29 (3) Subsequent elections may be called by the Governor if the
30 proposition fails, but each subsequent election may be held no earlier than
31 six (6) months after the date of the preceding election.

32
33 6-62-1109. Procedure for issuing bonds.

34 (a)(1) Prior to the issuance of any series of bonds, the Arkansas
35 Development Finance Authority shall adopt a resolution or trust indenture,
36 which may be a general resolution, series resolution, master trust indenture,

1 series indenture, supplemental indenture, or other form of resolution or
2 indenture as deemed necessary by the Arkansas Development Finance Authority
3 authorizing the issuance of the series of bonds.

4 (2) Each resolution or trust indenture shall contain the terms,
5 covenants, and conditions as are deemed desirable and consistent with this
6 subchapter, including, without limitation, those pertaining to the
7 establishment and maintenance of funds and accounts, the deposit and
8 investment of the bond proceeds and any pledged revenues, and the rights and
9 obligations of the State of Arkansas, its officers and officials, the
10 Arkansas Development Finance Authority, and the registered owners of the
11 bonds.

12 (3) All bonds issued under this subchapter shall be on a parity
13 as to security. The resolutions or trust indentures of the Arkansas
14 Development Finance Authority may provide for the execution and delivery by
15 the Arkansas Development Finance Authority of a trust indenture or trust
16 indentures, with one (1) or more banks or trust companies located within or
17 without this state, containing any of the terms, covenants, and conditions
18 described in this section and any other terms and conditions deemed necessary
19 by the Arkansas Development Finance Authority, which trust indenture or trust
20 indentures shall be binding upon the Arkansas Development Finance Authority
21 and the State of Arkansas, and their respective officers and officials.

22 (b) Any resolution or trust indenture adopted or executed under this
23 section may provide for the retirement and defeasance of the bonds by the
24 depositing of cash or investments in trust to be maintained for that purpose.
25 When the provisions of the resolution or trust indenture are complied with,
26 the bonds being refunded shall not be deemed to be bonds outstanding for the
27 purposes of this subchapter.

28
29 6-62-1110. Terms of bonds.

30 The bonds shall be subject to the following terms and conditions:

31 (1) The bonds shall be issued whether or not the interest is
32 subject to federal taxation, in series, as set forth in this section, in
33 amounts sufficient to finance all or part of project costs or to refund bonds
34 with the respective series to be designated by the year in which issued and,
35 if more than one (1) series is to be issued in a particular year, by
36 alphabetical designation;

1 (2) The bonds of each series shall have such date or dates as
2 the Arkansas Development Finance Authority shall determine and shall mature,
3 or be subject to mandatory sinking fund redemption, over a period ending not
4 later than thirty (30) years after the date of issue of each series; and

5 (3) The bonds of each series shall bear interest at the rate or
6 rates determined by the Arkansas Development Finance Authority at the time of
7 the sale of the bonds. The bonds may bear interest at either a fixed or a
8 variable rate, or may be convertible from one (1) interest rate mode to
9 another, and the interest shall be payable at such times as the Arkansas
10 Development Finance Authority shall determine;

11 (4) As determined by the Arkansas Development Finance Authority,
12 the bonds:

13 (A) Shall be issued in the form of bonds registered as to
14 both principal and interest without coupons;

15 (B) May be in any denominations and made exchangeable for
16 bonds of another form or denomination, bearing the same rate of interest;

17 (C) May be made payable at designated places within or
18 without the State of Arkansas;

19 (D) May be made subject to redemption prior to maturity in
20 any manner and for any redemption prices; and

21 (E) May contain other terms and conditions; and

22 (5) Each bond shall be executed with the original or facsimile
23 signatures of the Governor, the Secretary of State, and the Chair of the
24 Arkansas Development Finance Authority and shall have affixed or imprinted on
25 the bond the Great Seal of the State of Arkansas. Delivery of the bonds so
26 executed shall be valid, notwithstanding any change in the persons holding
27 the offices occurring after the bonds have been executed.

28 (6) The bonds shall have all the qualities of negotiable
29 instruments under the laws of the State of Arkansas, subject to the
30 provisions regarding registration of ownership set forth in this section or
31 in the resolution or trust indenture authorizing the bonds.

32
33 6-62-1111. Sale of bonds.

34 (a) The bonds may be sold in the manner, either at private or public
35 sale, and upon terms as the Arkansas Development Finance Authority shall
36 determine to be reasonable and expedient for effectuating the purposes of

1 this subchapter. The bonds may be sold at a price acceptable to the Arkansas
2 Development Finance Authority, which may include a discount or a premium.

3 (b) If the bonds are to be sold at public sale, the Arkansas
4 Development Finance Authority shall give notice of the offering of the bonds
5 in a manner reasonably designed to notify participants in the public finance
6 industry that the offering is being made. The Arkansas Development Finance
7 Authority shall set the terms and conditions of bidding, including the basis
8 on which the winning bid will be selected.

9 (c) The Arkansas Development Finance Authority may:

10 (1) Structure the sale of bonds utilizing financing techniques
11 recommended by its professional advisors in order to take advantage of market
12 conditions and obtain the most favorable interest rates consistent with the
13 purposes of this subchapter;

14 (2) Enter into ancillary agreements in connection with the sale
15 of the bonds that are necessary and advisable, including, without limitation,
16 bond purchase agreements, remarketing agreements, letters of credit, or
17 reimbursement agreements; and

18 (3) Enter into an interest rate exchange agreement or similar
19 agreement or contract with any person on a competitive or negotiated basis
20 under the terms and conditions as the Arkansas Development Finance Authority
21 shall determine but in compliance with § 15-5-317.

22
23 6-62-1112. Transfer of funds for debt service.

24 (a)(1) On or before the commencement of each fiscal year, the Chief
25 Fiscal Officer of the State shall:

26 (A) Determine the estimated amount required for payment of
27 all or a part of debt service on the bonds issued under this subchapter
28 during the fiscal year less the amount available for the payment of debt
29 service from estimated moneys to be available to the Arkansas Development
30 Finance Authority from other sources, if any; and

31 (B) Certify the amount computed under subdivision
32 (a)(1)(A) of this section to the Treasurer of State who shall transfer the
33 certified amount from the General Revenue Fund Account of the State
34 Apportionment Fund to a trust fund established by the resolution or trust
35 indenture authorizing the bonds as a bond or sinking fund in order to provide
36 for payment of all or part of the debt service on the bonds issued under this

1 subchapter.

2 (2) Payments shall be made into the bond or sinking fund not
3 later than one (1) day prior to the due date for the payment of the debt
4 service.

5 (b) The obligation to make periodic transfers from the General Revenue
6 Fund Account of the State Apportionment Fund to the bond or sinking fund
7 shall constitute a first charge against the General Revenue Fund Account
8 prior to all other uses to which general revenues are devoted, either under
9 present law or under any laws that may be enacted in the future. However, to
10 the extent other general obligation bonds of the State of Arkansas may
11 subsequently be incurred, all general obligation bonds shall rank on a parity
12 of security with respect to payment from the General Revenue Fund Account.

13 (c) The resolution or trust indenture authorizing or securing the
14 bonds issued shall identify the funds to which moneys shall be credited and
15 used for the purposes identified in this subchapter. For those purposes, the
16 holder of the trust funds is designated as the disbursing officer to
17 administer those funds in accordance with this subchapter.

18 (d) Moneys in the bond or sinking fund over and above the amount
19 necessary to ensure the prompt payment of debt service on the bonds, may be
20 used for the redemption of bonds prior to maturity in the manner and in
21 accordance with the provisions pertaining to redemption prior to maturity, as
22 set forth in the resolution or trust indenture authorizing or securing the
23 bonds.

24
25 6-62-1113. Sources of repayment.

26 (a) The bonds shall be direct general obligations of the State of
27 Arkansas for the payment of the debt service on which the full faith and
28 credit of the state are irrevocably pledged so long as any of the bonds are
29 outstanding.

30 (b) The bonds shall be payable from the general revenues of the state
31 and the amount of general revenues as is necessary is pledged to the payment
32 of debt service on the bonds and shall be and remain pledged for those
33 purposes. Each authorizing resolution or trust indenture may provide for a
34 reserve, credit enhancement, bond insurance, surety bond, or liquidity
35 facility for the bonds.

36

1 6-62-1114. Deposit and investment of proceeds.

2 (a) The proceeds from the sale of the bonds shall be deposited by the
3 recipient, as received, into trust funds or accounts in the name of the
4 Arkansas Development Finance Authority established pursuant to the resolution
5 or trust indenture authorizing or securing such bonds to accomplish the
6 purposes of this subchapter in amounts or portions as set forth in the
7 resolution or trust indenture securing the bonds.

8 (b)(1) The holder of the trust funds shall establish separate accounts
9 and subaccounts within the applicable fund to correspond to the applicable
10 series of bonds.

11 (2) In addition and under the resolution or trust indenture
12 authorizing or securing the bonds, there may be created other funds,
13 accounts, or subaccounts as the Arkansas Development Finance Authority may
14 determine to be necessary or desirable to accomplish the purposes of this
15 subchapter.

16 (c) All procedures and methods for application of proceeds of any
17 series of bonds to the financing of project costs shall be developed in
18 consultation with the Arkansas Higher Education Coordinating Board and the
19 Chief Fiscal Officer of the State, set forth in the resolution or trust
20 indenture authorizing or securing the bonds, and maintained as part of the
21 records of the Arkansas Development Finance Authority.

22 (d) The holder and administrator of funds, comprised in whole or in
23 part of proceeds of bonds or disbursements from funds established under this
24 subchapter, shall be required by appropriate provision of the resolution or
25 trust indenture authorizing or securing the bonds issued to assist the
26 Arkansas Development Finance Authority in preparing any report related to the
27 bonds that may be required by this subchapter or other applicable federal or
28 state law.

29 (e) The proceeds from the sale of the bonds and any money held in any
30 funds created under or authorized by this subchapter may be invested and
31 reinvested in accordance with the resolution or trust indenture authorizing
32 or securing the bonds issued and shall be invested by or at the direction of
33 the Arkansas Development Finance Authority to the fullest extent practicable
34 pending disbursement for the purposes intended in any of the following:

35 (1) Direct obligations of the United States, including
36 obligations issued or held in book entry form on the books of the United

1 States Department of the Treasury or obligations the principal of and
2 interest on which are unconditionally guaranteed by the United States;

3 (2) Bonds, debentures, notes, or other evidences of indebtedness
4 issued or guaranteed by any United States government agency if the
5 obligations are backed by the full faith and credit of the United States;

6 (3) Non-full faith and credit senior debt obligations issued or
7 guaranteed by United States government agencies;

8 (4) Money market funds investing exclusively in the investments
9 described in subdivisions (e)(1)-(3) of this section;

10 (5)(A) Certificates of deposit providing for deposits secured at
11 all times by collateral described in subdivisions (e)(1)-(3) of this section.

12 (B) The certificates must be issued by commercial bank
13 deposits which are insured by the Federal Deposit Insurance Corporation and
14 collateral of which must be held by a third party.

15 (C) The holder of the trust funds must have a perfected
16 first security interest in the collateral;

17 (6) Certificates of deposit, savings accounts, deposit accounts,
18 or money market deposits, all of which are fully insured by the Federal
19 Deposit Insurance Corporation;

20 (7) Bonds or notes issued by this state, any municipality,
21 county, or school district in this state or by any agency or instrumentality
22 of this state;

23 (8) Investment agreements with financial institutions or
24 insurance companies that are rated in one (1) of the two (2) highest rating
25 categories of a nationally recognized rating agency;

26 (9)(A) Repurchase agreements providing for the transfer of
27 securities from a dealer bank or securities firm to the holder of the trust
28 funds and the transfer of cash from the holder of the trust funds to the
29 dealer bank or securities firm with an agreement that the dealer bank or
30 securities firm will repay the cash plus a yield to the holder of the trust
31 funds in exchange for the securities at a specified date.

32 (B) Repurchase agreements shall satisfy the following
33 criteria:

34 (i) Repurchase agreements must be between the holder
35 of the trust funds and a dealer bank or securities firm described as follows:

36 (a) Dealers with at least one hundred million

1 dollars (\$100,000,000) in capital; or

2 (b) Banks whose deposits are insured by the
3 Federal Deposit Insurance Corporation; and

4 (ii) The written repurchase agreement contract must
5 include the following:

6 (a) Securities that are acceptable for
7 transfer are those listed in subdivisions (e)(1)-(3) of this section;

8 (b) The term of the repurchase agreement may
9 not exceed thirty (30) calendar days;

10 (c) The collateral must be delivered to the
11 holder of the trust funds, a trustee if a trustee is not supplying the
12 collateral, or a third party acting as agent for the trustee if the trustee
13 is supplying the collateral before or simultaneously with payment; and

14 (d)(1) The securities must be valued weekly,
15 marked-to-market at current market price plus accrued interest.

16 (2)(A) The value of collateral must be
17 equal to one hundred three percent (103%) of the amount of cash transferred
18 by the holder of the trust funds to the dealer bank or security firm under
19 the repurchase agreement plus accrued interest.

20 (B) If the value of securities
21 held as collateral declines below one hundred three percent (103%) of the
22 value of the cash transferred by the holder of the trust funds, then
23 additional cash or acceptable securities, or both, must be transferred and
24 held by the holder of the trust funds; and

25 (10) Any other investment authorized by state law.

26
27 6-62-1115. Use of bond proceeds.

28 (a) The proceeds of the bonds issued under this subchapter for
29 nonrefunding purposes, after the funding of any necessary reserve and the
30 costs associated with the issuance of and security for the bonds, shall only
31 be disbursed for project costs when requisitioned by the Chair of the
32 Arkansas Higher Education Coordinating Board or his or her designee, and
33 approved by the Chief Fiscal Officer of the State or his or her designee.

34 (b) The requisition under subsection (a) of this section shall certify
35 that the funds disbursed are for the payment of project costs that are
36 authorized to be financed under this subchapter and that have been duly

1 approved by the Arkansas Higher Education Coordinating Board.

2 (c) The proceeds of the bonds issued pursuant to this subchapter for
3 refunding purposes, after the funding of any necessary reserve and costs
4 associated with the issuance of and security for the bonds and the defeasance
5 of the bonds to be refunded, shall be used by the Arkansas Development
6 Finance Authority to directly pay or establish a trust fund to serve as an
7 escrow account for the purpose of paying or defeasing bonds issued under this
8 subchapter or under the Arkansas College Savings Bond Act of 1989, § 6-62-701
9 et seq.

10
11 6-62-1116. Refunding bonds.

12 (a)(1) The Arkansas Development Finance Authority may issue bonds for
13 the purpose of refunding bonds previously issued pursuant to this act or the
14 Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.

15 (2) To the extent that the refunding bonds are issued to refund
16 bonds issued under this subchapter and the principal amount of the refunding
17 bonds is not in a greater principal amount than the outstanding principal
18 amount of the bonds being refunded, the principal amount of the refunding
19 bonds shall not be subject to the two hundred fifty million dollar limit in §
20 6-62-1105.

21 (b) The refunding bonds shall be general obligations of the State of
22 Arkansas, secured as set forth in this subchapter, and secured and sold in
23 accordance with the provisions of this subchapter.

24 (c) The proceeds of the refunding bonds may either be applied to the
25 payment of the bonds being refunded or deposited in trust and there
26 maintained in cash or investments for the retirement of the bonds refunded,
27 as shall be specified by the Arkansas Development Finance Authority and the
28 authorizing resolution or trust indenture. The principal amount of the bonds
29 refunded that have been paid or defeased shall not be deemed outstanding for
30 purposes of this subchapter.

31 (d)(1) The authorizing resolution or trust indenture securing the
32 refunding bonds may provide, if the bonds being refunded were issued under
33 this subchapter, that the refunding bonds shall have the same security for
34 their payment as provided for the bonds being refunded.

35 (2) Refunding bonds shall be sold and secured in accordance with
36 the provisions of this subchapter pertaining to the sale and security of the

1 bonds.

2 (3) Other than approval of the resolution or trust indenture
3 under which refunding bonds are issued by appropriate action of the Arkansas
4 Development Finance Authority, no additional action or approval for the
5 issuance of refunding bonds shall be required to be taken by the Arkansas
6 Higher Education Coordinating Board or the Chief Fiscal Officer of the state
7 under this subchapter or as otherwise may be provided by other law.

8
9 6-62-1117. Tax exemption.

10 All bonds issued under this subchapter, and interest on the bond
11 proceeds, shall be exempt from all state taxes, including income,
12 inheritance, and property taxes. The bonds shall be eligible to secure
13 deposits of all public funds and shall be legal for investment of municipal,
14 county, bank, fiduciary, insurance company, and trust funds.

15
16 6-62-1118. Employment of professionals.

17 The Arkansas Development Finance Authority is authorized to retain
18 those professionals as it deems necessary to accomplish the issuance and sale
19 of the bonds, including, without limitation, legal counsel, financial
20 advisors, underwriters, trustees, paying agents, and remarketing agents.

21
22 6-62-1119. Construction.

23 (a) This subchapter shall be liberally construed to accomplish its
24 purposes. This subchapter shall constitute the sole authority necessary to
25 accomplish the purposes of this subchapter and the provisions of other laws
26 pertaining to the development of technology projects and facility improvement
27 projects and the financing shall not apply, except as specifically set forth
28 in this subchapter.

29 (b) This subchapter shall be interpreted to supplement existing laws
30 conferring rights and powers upon the Arkansas Development Finance Authority
31 and the Arkansas Higher Education Coordinating Board, and the rights and
32 powers set forth in this subchapter shall be alternative methods for the
33 accomplishment of the purposes of this subchapter.

34
35 6-62-1120. Rights and liabilities – Enforcement.

36 (a) This subchapter shall constitute a contract between the State of

1 Arkansas and the registered owners of all bonds issued under this subchapter
2 which shall never be impaired. Any violation of terms of this subchapter,
3 whether under purported legislative authority or otherwise, shall be enjoined
4 by the courts at the suit of any bondholder or of any taxpayer.

5 (b) The courts, in a suit against the Arkansas Development Finance
6 Authority or the Arkansas Higher Education Coordinating Board, the Treasurer
7 of State, or other appropriate officer or official of this state, shall
8 prevent a diversion of any revenues pledged under this subchapter and shall
9 compel the restoration of diverted revenues by injunction or mandamus.

10 (c) Without limitation as to any other appropriate remedy at law or in
11 equity, any bondholder, by an appropriate action, including without
12 limitation, injunction or mandamus, may compel the performance of all
13 covenants and obligations of the State of Arkansas and its officers and
14 officials under this subchapter.

15
16 6-62-1121. Rights and liabilities – Commencement.

17 This subchapter shall not create any right of any character, and no
18 right of any character shall arise under or pursuant to this subchapter until
19 the first series of bonds authorized by this subchapter shall have been sold
20 and delivered. The issuance of bonds authorized by this subchapter shall not
21 impair or affect any outstanding bonds of the Arkansas Development Finance
22 Authority issued under the Arkansas College Savings Bond Act of 1989, § 6-62-
23 701 et seq.

24
25 6-62-1122. Judicial review – Priority.

26 All cases involving the validity of this subchapter or any portion of
27 this subchapter, or in any way arising under this subchapter or involving the
28 bonds issued under this subchapter, shall be deemed of public interest and
29 shall be advanced by all courts and heard as a preferred cause. All appeals
30 from judgments or decrees rendered in these cases must be taken within thirty
31 (30) days after the rendition of the judgment or decree.

32
33 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that there is an immediate need for
35 a program to finance the design, development, equipping, acquisition,
36 improvement, and construction of technology projects and facility improvement

1 projects at state institutions of higher education within the state; that
2 such a program cannot be accomplished without the issuance of bonds secured
3 by the general revenues of the state to finance the program; and that this
4 act authorizes the issuance of the necessary bonds. Therefore, an emergency
5 is declared to exist and this act being immediately necessary for the
6 preservation of the public peace, health, and safety shall become effective
7 on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,
10 the expiration of the period of time during which the Governor may veto the
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is
13 overridden, the date the last house overrides the veto.

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16 APPROVED: 3/29/2005
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