

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 511 of the Regular Session

1 State of Arkansas

As Engrossed: S3/8/07 H3/19/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

SENATE BILL 840

4
5 By: Senators Glover, Critcher, Bookout, Capps, Hendren, B. Johnson, J. Taylor, Trusty, Wilkins,
6 Broadway, Altes, Argue, Baker, Bisbee, Brown, Bryles, Crumbly, Faris, Hill, Horn, G. Jeffress, J.
7 Jeffress, Laverty, Luker, Madison, Malone, Miller, B. Pritchard, Salmon, T. Smith, Steele, R. Thompson,
8 Whitaker, Wilkinson, Womack

9 By: Representatives Rosenbaum, Wills, Glidewell, L. Evans, Wyatt, Davenport, Davis, Kidd, Allen, Hoyt,
10 Reynolds, Shelby, House, J. Roebuck, Pierce, King, Hyde, D. Hutchinson, L. Cowling, Stewart,
11 Greenberg, George

12
13
14 **For An Act To Be Entitled**

15 AN ACT TO AUTHORIZE THE ARKANSAS STATE HIGHWAY
16 COMMISSION TO ISSUE FEDERAL HIGHWAY GRANT
17 ANTICIPATION AND TAX REVENUE BONDS FOR THE
18 PURPOSES OF CONSTRUCTING AND RENOVATING ROADS AND
19 HIGHWAYS; PROVIDING FOR A STATEWIDE ELECTION ON
20 THE QUESTION OF ISSUING BONDS; DECLARING AN
21 EMERGENCY; AND FOR OTHER PURPOSES.

22
23 **Subtitle**

24 "ARKANSAS INTERSTATE HIGHWAY FINANCING
25 ACT OF 2007."

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

29
30 SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add an
31 additional subchapter to read as follows:

32 27-64-401. Title.

33 This subchapter may be referred to and cited as the "Arkansas
34 Interstate Highway Financing Act of 2007."



1 27-64-402. Findings.

2 (a) The General Assembly of the State of Arkansas has determined that
3 there is an immediate need for highway improvements throughout the State of
4 Arkansas in order to provide for the health, safety and welfare of its
5 citizens and to promote economic development within the state. The General
6 Assembly has determined that through the revenues generated pursuant to the
7 Arkansas Highway Financing Act of 1999 the State Highway Commission has been
8 successful in completing the rehabilitation of much of the State's interstate
9 highway system and that such rehabilitation has been carried out in an
10 efficient, cost effective manner. The General Assembly has determined that
11 continued improvement of the interstate highway system is necessary and that
12 the best way to accomplish such improvement expeditiously is through the
13 issuance of additional federal highway grant anticipation and tax revenue
14 bonds to finance such highway improvements.

15 (b) The General Assembly has further determined that the bonds should
16 be payable from revenues currently designated by the Arkansas Highway
17 Financing Act of 1999, including federal highway assistance funding and the
18 proceeds from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and
19 the Motor Fuel Excise Tax Act of 1999, and that the repayment of such bonds
20 should also be guaranteed by the full faith and credit of the state.

21
22 27-64-403. Definitions.

23 As used in this subchapter:

24 (1) "Act" shall mean this Arkansas Interstate Highway Financing
25 Act of 2007;

26 (2) "Bonds" shall mean the "State of Arkansas Federal Highway
27 Grant Anticipation and Tax Revenue Bonds" or "GARVEE bonds," as authorized
28 herein;

29 (3) "Commission" shall mean the State Highway Commission,
30 created and existing pursuant to Amendment 42 to the Constitution of the
31 State of Arkansas;

32 (4) "Debt service" shall mean all amounts required for the
33 payment of principal, interest, and premium, if any, due with respect to the
34 bonds in any fiscal year, along with all associated costs, including the fees
35 and costs of paying agents and trustees, remarketing agent fees, credit
36 enhancement costs, and other amounts necessary in connection with the bonds;

1 (5) "Designated revenues" shall mean:

2 (A) That portion designated by the Commission of funds
3 received or to be received from the federal government as federal highway
4 assistance funding allocated to the State designated as federal highway
5 interstate maintenance funds; and

6 (B) Revenues derived from the increase in taxes levied on
7 distillate special fuels pursuant to the Arkansas Distillate Special Fuel
8 Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999; and

9 (6) "Highway improvements" or "highway improvement projects"
10 shall mean restoration and improvements to all of the interstate highway
11 system within the state, including roadways, bridges or rights-of-way under
12 the jurisdiction of the commission, and shall also include the acquisition,
13 construction, reconstruction and renovation of such interstate system and
14 facilities appurtenant or pertaining thereto.

15
16 27-64-404. Authorization – Purposes.

17 The State Highway Commission is hereby authorized, subject to the
18 approval of the voters in a state-wide election, to issue bonds from time to
19 time provided that the total principal amount outstanding from the issuance
20 of the bonds, together with the total principal amount outstanding from the
21 issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall
22 not, at any time, exceed five hundred seventy-five million dollars
23 (\$575,000,000). The bonds will be issued in one or more series of various
24 principal amounts, with the last series being issued no later than December
25 31, 2013. The bonds shall be issued for following purposes:

26 (1) Accelerating interstate highway improvement projects already
27 underway or scheduled;

28 (2) Funding new interstate highway improvement projects;

29 (3) Financing the restoration, reconstruction, and renovation of
30 interstate highway improvements within the State of Arkansas; and

31 (4) Paying the costs of issuance of the bonds, including the costs of
32 bond issuance or other credit enhancement.

33
34 27-64-405. Election.

35 (a) No bonds shall be issued under this Act unless the authority of
36 the State Highway Commission to issue such bonds is approved by a majority of

1 the qualified electors of the state voting on the question at a state-wide
2 election called by proclamation of the Governor. Such election may be in
3 conjunction with a general election or it may be a special election. Notice
4 of such election shall be published by the Secretary of State in a newspaper
5 of general circulation in the state at least thirty (30) days prior to such
6 election, and notice thereof shall be mailed to each county board of election
7 commissioners and the sheriff of each county at least sixty (60) days prior
8 to such election.

9 (b) The notice of election shall state that the election is to be held
10 for the purpose of submitting to the people the following proposition, in
11 substantially the form set forth herein:

12 “Authorizing the State Highway Commission to issue State of Arkansas
13 Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) from
14 time to time provided that the total principal amount outstanding from the
15 issuance of such bonds, together with the total principal amount outstanding
16 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
17 1999, shall not, at any time, exceed five hundred seventy-five million
18 dollars (\$575,000,000). If approved, the bonds will be issued in one or more
19 series of various principal amounts, with the last series being issued no
20 later than December 31, 2013. The bonds shall be issued for the purpose of
21 paying the cost of constructing and renovating improvements to interstate
22 highways and related facilities in the State of Arkansas.

23 “The bonds shall be general obligations of the State of Arkansas,
24 payable from certain designated revenues and also secured by the full faith
25 and credit of the State of Arkansas, including its general revenues.
26 Pursuant to the Arkansas Highway Financing Act of 2007 (the “Bond Act”), the
27 bonds will be repaid first from: (1) revenues derived from federal highway
28 assistance funding allocated to the State of Arkansas designated as federal
29 highway interstate maintenance funds, and (2) revenue derived from the
30 increase in the excise tax levied on distillate special fuels (diesel)
31 pursuant to Section 2 of the “Arkansas Distillate Special Fuel Excise Tax Act
32 of 1999” and the “Motor Fuel Excise Tax Act of 1999” and transferred to the
33 State Highway and Transportation Department Fund pursuant to Arkansas Code
34 27-70-207(c) in accordance with Section 4(a) of the “Arkansas Distillate
35 Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of
36 1999.” To the extent that designated revenues are insufficient to make

1 timely payment of debt service on the bonds, such payment shall be made from
2 the general revenues of the State of Arkansas. The bonds shall be issued
3 pursuant to the authority of and the terms set forth in the Bond Act.

4 “Pursuant to the Bond Act, the highway improvements to be financed are
5 limited to the restoration and improvements to all of the interstate highway
6 system within the State, including roadways, bridges or rights-of-way under
7 jurisdiction of the State Highway Commission, which shall also include the
8 acquisition, construction, reconstruction and renovation of such interstate
9 highway system and facilities appurtenant or pertaining thereto.

10 “Pursuant to the Bond Act, “designated revenues” are defined as: (1)
11 that portion designated by the commission of all funds received or to be
12 received from the federal government as federal highway interstate
13 maintenance funds, and (2) revenues derived from the increase in taxes levied
14 on distillate special fuels pursuant to Section 2 of the “Arkansas Distillate
15 Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of
16 1999” and transferred to the State Highway and Transportation Department Fund
17 pursuant to Arkansas Code 27-70-207(c) in accordance with Section 4(a) of the
18 “Arkansas Distillate Special Fuel Excise Tax Act of 1999” and the “Motor Fuel
19 Excise Tax Act of 1999.” Designated revenues shall not include the revenues
20 derived from the increase in tax on motor fuel (gasoline) resulting from the
21 Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel
22 Excise Tax Act of 1999. The bonds are further secured by the full faith and
23 credit of the State of Arkansas, and to the extent “designated revenues” are
24 insufficient to make timely payment of debt service on the bonds, the general
25 revenues of the state shall be used to pay debt service on the bonds.”

26 (c) The ballot title shall be “Issuance of State of Arkansas Federal
27 Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and
28 credit of the State of Arkansas.” On each ballot there shall be printed the
29 title, the proposition set forth in § 27-64-406 and the following:

30 “FOR authorizing the State Highway Commission to issue State of
31 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time
32 to time provided that the total principal amount outstanding from the
33 issuance of such bonds, together with the total principal amount outstanding
34 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
35 1999, shall not, at any time, exceed five hundred seventy-five million
36 dollars (\$575,000,000); such bonds to be issued in one or more series of

1 various principal amounts, with the last series being issued no later than
2 December 31, 2013 and to be secured by the full faith and credit of the State
3 of Arkansas. []”

4 “AGAINST authorizing the State Highway Commission to issue State of
5 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time
6 to time provided that the total principal amount outstanding from the
7 issuance of such bonds, together with the total principal amount outstanding
8 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
9 1999, shall not, at any time, exceed five hundred seventy-five million
10 dollars (\$575,000,000); such bonds to be issued in one or more series of
11 various principal amounts, with the last series being issued no later than
12 December 31, 2013 and to be secured by the full faith and credit of the State
13 of Arkansas. []”

14 (d) The county boards of election commissioners in each of the several
15 counties of the state shall hold and conduct the election, and each such
16 board is hereby authorized and directed to take such action with respect to
17 the appointment of election officials and such other matters as is required
18 by the laws of the state. The vote shall be canvassed and the result thereof
19 declared in each county by such boards. The results shall, within ten (10)
20 days after the date of the election, be certified by such county boards to
21 the Secretary of State, who shall forthwith tabulate all returns so received
22 and certify to the Governor the total vote for and against the proposition
23 submitted pursuant to this Act.

24 (e) The result of the election shall be proclaimed by the Governor by
25 the publication of such proclamation one (1) time in a newspaper of general
26 circulation in the State of Arkansas, and the results as proclaimed shall be
27 conclusive unless a complaint is filed within thirty (30) days after the date
28 of such publication in the chancery court of Pulaski County challenging such
29 results.

30 (f) If a majority of the qualified electors voting on the proposition
31 vote in favor of the proposition, then the Commission shall be authorized to
32 issue bonds in the manner and on the terms set forth in this Act. If a
33 majority of the qualified electors voting on the proposition vote against the
34 proposition, the Commission shall have no such authority. Subsequent
35 elections may be called by the Governor if the proposition fails, but each
36 such subsequent election may be held no earlier than six (6) months after the

1 date of the preceding election.

2
3 27-64-406. Procedure for issuing bonds.

4 Prior to the issuance of any series of bonds, the Commission shall
5 adopt a resolution authorizing the issuance of such series of bonds. Each
6 such resolution shall contain such terms, covenants, and conditions as are
7 deemed desirable and consistent with this Act, including, without limitation,
8 those pertaining to the establishment and maintenance of funds and accounts,
9 the deposit and investment of the Federal Highway Assistance payments and
10 bond proceeds, and the rights and obligations of the state, its officers and
11 officials, the Commission, and the registered owners of the bonds. The
12 resolutions of the Commission may provide for the execution and delivery by
13 the Commission of a trust indenture or trust indentures, with one or more
14 banks or trust companies located within or without the state, containing any
15 of the terms, covenants, and conditions referred to above and such other
16 terms and conditions deemed necessary by the Commission, which trust
17 indenture or trust indentures shall be binding upon the Commission and the
18 state, and their respective officers and officials.

19
20 27-64-407. Terms of bonds.

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

22 (1) The bonds shall be issued in series, as set forth herein, in
23 amounts sufficient to finance all or part of the costs of construction and
24 maintenance of highway improvements described in § 27-64-404 with the
25 respective series to be designated by the year in which issued and, if more
26 than one (1) series is to be issued in a particular year, by alphabetical
27 designation.

28 (2) The bonds of each series shall have such date or dates as
29 the Commission shall determine and shall mature, or be subject to mandatory
30 sinking fund redemption, over a period ending not later than twelve (12)
31 years after the date of issue of each series.

32 (3) The bonds of each series shall bear interest at the rate or
33 rates determined by the Commission at the sale of the bonds. The bonds may
34 bear interest at either a fixed or a variable rate, or may be convertible
35 from one interest rate mode to another, and such interest shall be payable at
36 such times as the Commission shall determine.

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 Commission shall determine.

8 (5) Each bond shall be executed with the facsimile signatures of
9 the chairman and secretary of the Commission and shall have affixed or
10 imprinted thereon the seal of the Commission. Delivery of the bonds so
11 executed shall be valid, notwithstanding any change in the persons holding
12 such offices occurring after the bonds have been executed.

13
14 27-64-408. Sale of Bonds.

15 (a) The bonds may be sold in such manner, either at private or public
16 sale, and upon such terms as the Commission shall determine to be reasonable
17 and expedient for effecting the purposes of this Act. The bonds may be sold
18 at a price acceptable to the Commission, which price may include a discount
19 or a premium.

20 (b) If the bonds are to be sold at public sale, the Commission shall
21 give notice of the offering of such bonds in a manner reasonably designed to
22 notify participants in the public finance industry that such offering is
23 being made. The Commission shall set the terms and conditions of bidding,
24 including the basis on which the winning bid will be selected.

25 (c) The Commission is authorized to structure the sale of bonds
26 utilizing such financing techniques as are recommended by its professional
27 advisors in order to take advantage of market conditions and obtain the most
28 favorable interest rates consistent with the purposes of this Act. In
29 furtherance of this authorization, the Commission may enter into such
30 ancillary agreements in connection with the sale of the bonds as it deems
31 necessary and advisable, including, without limitation, bond purchase
32 agreements, remarketing agreements, and letter of credit and reimbursement
33 agreements.

34
35 27-64-409. Employment of professionals.

36 The Commission is authorized to retain such professionals as it deems

1 necessary to accomplish the issuance and sale of the bonds, including,
2 without limitation, legal counsel, financial advisors, underwriters,
3 trustees, paying agents and remarketing agents.

4
5 27-64-410. Sources of repayment.

6 The bonds shall be general obligations of the State of Arkansas secured
7 and payable from the designated revenues, as defined herein, and the general
8 revenues of the state. The bonds will be payable first from certain
9 designated revenues, specifically: (1) that portion designated by the
10 Commission of funds received or to be received from the federal government as
11 federal highway assistance funding allocated to the state designated as
12 federal highway interstate maintenance funds, and (2) revenues derived from
13 the increase in taxes levied on distillate special fuels pursuant to Section
14 2 of the "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the
15 "Motor Fuel Excise Tax Act of 1999" and transferred to the State Highway and
16 Transportation Department Fund pursuant to Arkansas Code 27-70-207(c) in
17 accordance with Section 4(a) of the "Arkansas Distillate Special Fuel Excise
18 Tax Act of 1999" and the "Motor Fuel Excise Tax Act of 1999." To the extent
19 that designated revenues are insufficient to make timely payment of debt
20 service on the bonds, such payment shall be made from the general revenues of
21 the State of Arkansas. In order to secure the payment of debt service, any
22 trust instrument, resolution, or other document setting forth the security
23 for the bondholders may provide for the direct payment of the federal highway
24 assistance funds that are designated revenues directly into a trust fund, or
25 to a paying agent, for the payment of debt service on the bonds and it shall
26 not be necessary for such funds to be deposited with the treasury of the
27 state.

28
29 27-64-411. Investment of proceeds.

30 Any designated revenues, and any proceeds of bonds held pending
31 disbursement on highway improvements, shall be invested by the Commission to
32 the full extent practicable pending disbursement for the purposes intended.
33 Notwithstanding any other provision of law, such investments shall be in
34 accordance with the terms of the resolution or trust indenture authorizing or
35 securing the series of bonds to which said designated revenues or bond
36 proceeds appertain to the extent the terms of such resolution or trust

1 indenture are applicable.

2
3 27-64-412. Refunding bonds.

4 (a) The Commission may issue bonds for the purpose of refunding bonds
5 previously issued pursuant to this Act; provided, however, that such bonds
6 are not issued after December 31, 2013 and that the total amount of bonds
7 outstanding after the refunding is completed does not exceed the total amount
8 authorized by this Act.

9 (b) Such refunding bonds shall be special obligations of the State of
10 Arkansas, secured as set forth herein, and shall be secured and sold in
11 accordance with the provisions of this Act.

12
13 27-64-413. Tax Exemption.

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

19
20 27-64-414. Powers of Commission.

21 All powers granted to the State Highway Commission pursuant to this Act
22 shall be deemed in addition to such powers as already exist pursuant to
23 Amendment 42 to the Arkansas Constitution and the laws of the State of
24 Arkansas. No member of the Commission shall be liable personally for any
25 reason arising from the issuance of bonds pursuant to this Act unless such
26 person shall have acted with corrupt intent.

27
28 SECTION 2. Arkansas Code § 26-56-201(f), pertaining to the
29 distribution of additional distillate fuel excise tax, is amended to read as
30 follows:

31 (f) The additional taxes collected pursuant to this section shall be
32 considered special revenues and shall be distributed as set forth in the
33 Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any
34 requirements for the repayment of bonds issued under the Arkansas Highway
35 Financing Act of 1999, § 27-64-201 et seq., ~~and the Arkansas Interstate~~
36 ~~Highway Financing Act of 2005, § 27-64-301 et seq.~~ and the Arkansas

1 Interstate Highway Financing Act of 2007.

2
3 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
4 General Assembly of the State of Arkansas that there is an immediate need
5 for the construction, reconstruction and renovation of highways and roads
6 comprising the U.S. Interstate system within the State of Arkansas and that
7 such a program cannot be accomplished without the issuance of bonds secured
8 by federal highway assistance payments to finance the program. Therefore, an
9 emergency is declared to exist and this act being necessary for the
10 preservation of the public peace, health, and safety shall become effective
11 on:

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

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

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

18
19 /s/ Glover

20
21 APPROVED: 3/27/2007
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36