

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

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

A Bill

HOUSE BILL 2115

For An Act To Be Entitled

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

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

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

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

33 (a) The Arkansas Development Finance Authority (the 'Authority'), in
34 cooperation with the Arkansas State Highway Commission (the 'Commission'), is
35 hereby authorized to issue bonds to be known as Arkansas Development Finance

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

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

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

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

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

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

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

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

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

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

35 (f) The Bonds shall be authorized by resolution of the Authority.

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

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

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

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

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

33 (k) (1) On or before commencement of each fiscal year, the
34 Commission and the Authority shall determine the estimated amount required for
35 payment for all of the principal, interest, premium, if any, and applicable

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

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

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

1 such series of Bonds; provided however, the Commission shall be permitted to
2 use and expend the money and funds in the State Highway and Transportation
3 Department Fund, except those amounts in the 1991 Highway Construction and
4 Maintenance Account, for the purposes otherwise specified in Arkansas Code
5 § 19-6-405 to the extent not needed as provided in this subparagraph (3).

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

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

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

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

35 (o) No Bonds shall be issued under this Section except by and with the

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

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

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

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

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

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

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

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

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

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

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

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

28 "19-6-405. Highway and Transportation Department Fund.
29 The State Highway and Transportation Department Fund shall consist of
30 that part of the special revenues as specified in subdivisions (2), (3), (4),
31 (22), (81), (105), (106), (107), and (123) of § 19-6-301, known as 'highway
32 revenue', as distributed under § 27-70-201 et seq., which is the Arkansas
33 Highway Revenue Distribution Law, and § 27-70-103 and § 20-72-301 et seq.;
34 those special revenues specified in subdivision (10) of § 19-6-301; fifty
35 percent (50%) of subdivision (26) of § 19-6-301; Federal Revenue Sharing funds

1 as set out in § 19-5-1005; and any federal funds which may become available,
2 there to be used for the maintenance operation, and improvement required by
3 the State Highway and Transportation Department in carrying out the functions,
4 powers, and duties as set out in the Arkansas Constitution, Amendment 42,
5 §§ 27-65-102 - 27-65-107, 27-65-110, 27-65-122, 27-65-124, and 27-70-209, and
6 the other laws of this State prescribing the powers and duties of the State
7 Highway and Transportation Department and the State Highway Commission."

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

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

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

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

33 "(C) Seventy percent (70%) of the amount thereof to a special account
34 in the State Highway and Transportation Department Fund to be designated the
35 '1991 Highway Construction and Maintenance Account'."

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

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

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

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

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

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

1 *State Highway Commission is authorized to expend up to ten percent (10%) of*
2 *the total funds and revenues available and disbursed to the Commission*
3 *pursuant to this Act for the purposes of achieving those goals."*

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

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

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

19
20 */s/ John Miller*