

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

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

A Bill

SENATE BILL 734

For An Act To Be Entitled

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

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

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

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

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

1 in compliance with the procedures set forth herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Section provided.

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

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

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

20

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

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

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

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

3

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

15

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

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

25

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

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

31

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

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

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

12

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

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

18

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

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

34

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

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

3

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

6

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

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/s/Gibson et al

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