

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 2260

5 By: Representatives Verkamp, Stovall  
6 By: Senator Wilkinson  
7

## For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS RAILROAD  
11 FINANCING ACT TO AUTHORIZE THE ARKANSAS  
12 DEVELOPMENT FINANCE AUTHORITY TO MAKE CREDIT RISK  
13 PREMIUM LOANS AND GRANTS TO SMALL RAILROADS TO  
14 ACCESS FUNDS FROM THE RAILROAD REHABILITATION AND  
15 IMPROVEMENTS FINANCING PROGRAM; TO DECLARE AN  
16 EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

18 TO ESTABLISH THE ARKANSAS RAILROAD  
19 FINANCING ACT TO ACCESS FEDERAL LOAN  
20 FUNDS FOR SMALL RAILROADS FROM THE  
21 RAILROAD REHABILITATION AND IMPROVEMENTS  
22 FINANCING PROGRAM.  
23  
24  
25

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

28 SECTION 1. Arkansas Code Title 15, Chapter 5, is amended to add an  
29 additional subchapter to read as follows:

30 Subchapter 15. Arkansas Railroad Financing Act.

31  
32 15-5-1501. Title.

33 This subchapter shall be known and be cited as the "Arkansas Railroad  
34 Financing Act".

35  
36 15-5-1502. Purpose.



1           (a)(1) The Federal Railroad Administration, under Section 7203 of the  
 2 Transportation Equity Act for the 21st Century, is authorized to make direct  
 3 loans to small railroads to finance railroad rehabilitation and improvement  
 4 projects.

5           (2) Under the Federal Railroad Administration regulations to  
 6 implement the Railroad Rehabilitation and Improvements Financing program, any  
 7 small railroads applying for federal loans are required to pay a credit risk  
 8 premium for the privilege of receiving a loan under this program.

9           (3) The credit risk premium may be paid by the railroad or by an  
 10 infrastructure partner of the project.

11           (4) The payment of the credit risk premium must be made before  
 12 the loan moneys may be disbursed and are not part of the loan amount.

13           (b) The Arkansas General Assembly finds that:

14           (1) The small railroads in Arkansas may not be able to raise the  
 15 amount of money needed to pay the credit risk premium to participate in this  
 16 program;

17           (2) These small railroads are then not able to access badly  
 18 needed capital financing for railroad improvements; and

19           (3) Therefore a state program is needed to assist these small  
 20 railroads with funding of the credit risk premiums.

21  
 22           15-5-1503. Definitions.

23           As used in this subchapter:

24           (1) "Authority" means the Arkansas Development Finance Authority;

25           (2) "Board" means the Board of Directors of the Arkansas Development  
 26 Finance Authority;

27           (3) "Credit risk premium" means that portion of the total subsidy cost  
 28 to the federal government of a direct loan or loan guarantee that is not  
 29 covered by federal appropriations and which must be paid by a railroad or its  
 30 non-federal infrastructure partner before that direct federal loan may be  
 31 disbursed or loan guarantee may be issued by the Federal Railroad  
 32 Administration under the Railroad Rehabilitation and Improvement Financing  
 33 program;

34           (4) "Credit risk premium loan" means a direct loan by the Arkansas  
 35 Development Finance Authority from the fund for the payment of the credit  
 36 risk premium by the railroad or an infrastructure partner made under this

1 subchapter;

2 (5) "Fund" means the fund created under this subchapter for the  
 3 purpose of making direct loans and grants by authority to railroads called  
 4 the Arkansas Railroad Credit Risk Premium Revolving Loan Fund;

5 (6) "Infrastructure partner" means any state or local government,  
 6 government sponsored authority or corporation, railroad, or group of two (2)  
 7 or more entities, at least one (1) of which is a railroad, participating in a  
 8 joint venture, that supplies or is the source of the credit risk premium that  
 9 must be paid to the Federal Railroad Administration in lieu of, or in  
 10 combination with, an appropriation in connection with federal financial  
 11 assistance provided to the railroad for a railroad rehabilitation and  
 12 improvement financing project;

13 (7) "Qualified borrower" means an applicant that has been approved for  
 14 a railroad rehabilitation and improvement financing loan from the Federal  
 15 Railroad Administration and who has applied to the authority for a credit  
 16 risk premium loan under this subchapter;

17 (8) "Railroad" means a rail carrier subject to Part A of Subtitle IV  
 18 of Title 49, United States Code;

19 (9) "Railroad rehabilitation and improvement financing project" means  
 20 the project for which proceeds of a Federal Railroad Administration loan are  
 21 utilized which includes financial assistance solely to:

22 (A) Acquire, improve, or rehabilitate intermodal or rail freight  
 23 or passenger equipment or facilities, including track, components of track,  
 24 bridges, yards, buildings, and shops;

25 (B) Refinance outstanding debt incurred for purposes under  
 26 subdivision (9)(A) of this section; or

27 (C) Develop or establish new intermodal or railroad facilities;  
 28 and

29 (10) "State" means the State of Arkansas.

30  
 31 15-5-1504. Duty of the authority.

32 (a) The Arkansas Development Finance Authority, in addition to all the  
 33 duties and functions defined in the Arkansas Development Finance Authority  
 34 Act, §§ 15-5-101 - 15-5-106, 15-5-201 - 15-5-211, 15-5-213, and 15-5-301 -  
 35 15-5-316, may approve or deny the applications for the loans to pay credit  
 36 risk premiums for qualified borrowers.

1       (b) If funds are available, the authority may make grants to railroads  
 2 that do not qualify for repayment of a credit risk premium loan.

3  
 4       15-5-1505. Loans - Conditions.

5       Loans for credit risk premiums may be made if:

6               (1) The Arkansas Development Finance Authority decides the  
 7 making of a loan to be in the best interest of the economic development of  
 8 the State of Arkansas;

9               (2) The railroad is found to be financially responsible and  
 10 demonstrates that sufficient income may be reasonably expected to be  
 11 available to pay the payments on the loan and the normal operating expenses  
 12 of the business; and

13               (3) The length of term for the credit risk premium loan does not  
 14 exceed ten (10) years.

15  
 16       15-5-1506. Evaluation of railroads.

17               (a)(1) The Arkansas Development Finance Authority shall promulgate  
 18 standards and regulations for the evaluation of the financial condition and  
 19 business history of the railroads.

20               (2) The authority may require the attachment to each loan  
 21 application a financial report and evaluation by an independent certified  
 22 public accounting firm of whether the railroad meets prescribed minimum  
 23 standards and qualifications.

24               (b) The authority may promulgate rules and regulations for the  
 25 handling of disbursements from and payments to the Arkansas Railroad Credit  
 26 Risk Premium Revolving Loan Fund and for the management and implementation of  
 27 programs under this subchapter.

28  
 29       15-5-1507. Applications - Supporting documents.

30               (a) Each railroad requesting a credit risk premium loan shall submit  
 31 to the Arkansas Development Finance Authority an application, supporting  
 32 documents, and instruments that are required by the rules and regulations.

33               (b) All loan application forms and other documentation shall be  
 34 prescribed by the authority and approved by a majority vote of the board of  
 35 directors.

1       15-5-1508. Applications - Review - Confidentiality and public  
2       disclosure - Notice.

3       (a) All applications filed with the Arkansas Development Finance  
4       Authority under this subchapter shall first be reviewed by the appropriate  
5       designated staff officials of the authority for preliminary review and  
6       recommendation before being submitted for consideration by the authority.

7       (b)(1) All applications submitted to the authority and all supporting  
8       documents, instruments, proposed contracts, estimated costs, or other  
9       evidence submitted with the application shall be confidential and shall not  
10      be open to public review except as provided in this subchapter.

11      (2) Staff meetings for the purpose of giving preliminary review  
12      of the applications shall be confidential and shall not be open to the  
13      public.

14      (c) Upon conclusion of the preliminary review, if the request is  
15      submitted to the authority with a recommendation that it be approved, the  
16      application and all supporting documents, including the findings and the  
17      recommendations resulting from the staff shall be an open public record  
18      available for inspection during all regular business hours.

19      (d) If an application from a railroad is not recommended for approval  
20      by the authority, the application and all supporting documents, including all  
21      findings and recommendations by the staff, shall continue to be confidential  
22      and not open to public inspection.

23      (e)(1) The railroad shall be notified in writing of any staff  
24      determination that the application is not being submitted to the authority  
25      with a recommendation that it be approved.

26      (2) Except if the railroad files a petition with the authority  
27      requesting that the authority hold a hearing in regard to the application,  
28      the notice shall advise the railroad that the application will be kept  
29      confidential.

30      (3) The petition for hearing shall be filed not more than thirty  
31      (30) days from the date of receipt of the written notice.

32      (4) If the petition for a hearing is filed, the application and  
33      all supporting documents become public information available for public  
34      inspection.

35  
36      15-5-1509. Disposition of funds.

1           (a)(1) The Director of the Department of Finance and Administration  
 2 may accept donations, grants, bequests, and devises, conditional or  
 3 otherwise, of money, property, services, or other things of value which may  
 4 be received from the federal government or any federal agency, any  
 5 governmental agency, or any institution, person, firm, or corporation, public  
 6 or private, to be held, used, or applied for any or all of the purposes under  
 7 this subchapter.

8                         (2) The director may deposit into the Arkansas Railroad  
 9 Credit Risk Premium Revolving Loan Fund any funds appropriated by the General  
 10 Assembly for the purposes of the program created under this subchapter.

11           (b) The funds received in subsection (a) of this section are cash  
 12 funds restricted in their use and dedicated to be used solely as authorized  
 13 in § 15-5-1510.

14           (c) The cash funds as received by the Department of Finance and  
 15 Administration shall not be deposited in or deemed to be a part of the State  
 16 Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas  
 17 Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any  
 18 other constitutional or statutory provision. The department shall pay the  
 19 cash funds to the Arkansas Railroad Credit Risk Premium Revolving Loan Fund  
 20 to be used by the Arkansas Development Finance Authority for the purposes  
 21 authorized by § 15-5-1510.

22           (d) The authority shall administer the funds so deposited and shall  
 23 use the funds for the purposes of loan assistance to railroads for credit  
 24 risk premiums on railroad rehabilitation and improvement financing projects  
 25 and for grants to railroads for payment of credit risk premiums if they do  
 26 not qualify for repayment of a loan under this subchapter.

27  
 28           15-5-1510. Arkansas Railroad Credit Risk Premium Revolving Loan Fund.

29           (a)(1) There is established a cash fund account of the Arkansas  
 30 Development Finance Authority to be known as the "Arkansas Railroad Credit  
 31 Risk Premium Revolving Loan Fund".

32                         (2) This cash fund account is to be maintained in one (1) or  
 33 more financial institutions and shall be administered in accordance with this  
 34 subchapter.

35           (b) The authority may accept moneys for the Arkansas Railroad Credit  
 36 Risk Premium Revolving Loan Fund from any source, including, but not limited

1 to, funds from the Department of Finance and Administration as provided in §  
 2 15-5-1509.

3 (c) The fund shall be a continuing fund, not subject to fiscal year  
 4 limitations, and shall be used for loans for the payment of credit risk  
 5 premiums for railroad rehabilitation and improvements in this state and as  
 6 provided in subsection (d) of this section.

7 (d) Any interest at the end of the fiscal year which exceeds the  
 8 amount necessary to cover loan defaults occurring during that fiscal year  
 9 together with a reasonable reserve for future losses, shall be made available  
 10 for nonrefundable grants to railroads for credit risk premiums in cases where  
 11 private financing of the credit risk premium is unavailable and where a  
 12 railroad may not qualify for repayment of a credit risk premium loan.

13 (e) This fund shall be administered by the Arkansas Development  
 14 Finance Authority.

15  
 16 15-5-1511. Loan for credit risk premiums - Annual report.

17 (a) The Arkansas Development Finance Authority may develop and  
 18 implement, with the technical assistance of the Arkansas State Highway and  
 19 Transportation Department, necessary rules and regulations to receive,  
 20 review, and approve applications for loan assistance for credit risk premiums  
 21 on railroad rehabilitation and improvement projects in this state.

22 (b) The maximum loan amount approved by the authority shall be  
 23 modified as necessary to ensure adequate loan assistance is available for  
 24 credit risk premiums on railroad rehabilitation and improvement projects.

25 (c) For loans under this subchapter, the board will give priority  
 26 consideration, but not necessarily in the following order, to projects that:

27 (1) Enhance public safety;

28 (2) Enhance the environment;

29 (3) Promote economic development;

30 (4) Enable United States companies to be more competitive in  
 31 international markets;

32 (5) Are endorsed by the plans prepared under Section 135 of  
 33 Title 23, United States Code, by the state or states in which they are  
 34 located; or

35 (6) Preserve or enhance rail or intermodal service to small  
 36 communities or rural areas.

1           (d) The authority shall report in October of each year to the chair of  
2 Arkansas Legislative Council on the status of the Arkansas Railroad Credit  
3 Risk Premium Revolving Loan Fund.

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5           15-5-1512. Criteria for grant approval.

6           The Arkansas Development Finance Authority may develop and implement  
7 criteria for grant approval of interest moneys to be used as authorized in §  
8 15-5-1510(d).

9  
10           SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
11 General Assembly of the State of Arkansas that small railroads in Arkansas  
12 can not raise the amount of money needed to pay the credit risk premium to  
13 participate in the Railroad Rehabilitation and Improvements Financing  
14 program; that these small railroads are not then able to access badly needed  
15 capital financing for railroad improvements; that the program may expire in a  
16 short period of time; and therefore a state program is needed to assist these  
17 small railroads with funding of the credit risk premiums and is necessary to  
18 take effect at the beginning of the state's fiscal year. Therefore, an  
19 emergency is declared to exist and this act being necessary for the  
20 preservation of the public peace, health, and safety shall become effective  
21 on July 1, 2003.