

Act 945 of the 1989 Regular Session.

Act 945

SB587

By: Senator Gibson

"AN ACT AUTHORIZING THE ISSUANCE BY THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY OF ECONOMIC DEVELOPMENT CREDIT ENHANCEMENT GENERAL OBLIGATION BONDS IN PRINCIPAL AMOUNTS NOT TO EXCEED \$25,000,000; PRESCRIBING OTHER MATTERS RELATING THERETO; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Title.

This act may be referred to and cited as the "Economic Development Credit Enhancement Act of 1989."

SECTION 2. Legislative findings and declaration of public necessity.

(a) The General Assembly finds:

(1) That the Arkansas Development Finance Authority Bond Guaranty Act of 1985 (the "Guaranty Act") has provided financing and credit enhancement for 24 industrial and agribusiness enterprises located throughout the state;

(2) That the providing of financing and credit enhancement for these projects has created new employment and made possible the retention of existing employment thereby helping to alleviate unemployment within the state;

(3) That the economic well-being of the citizens of the state will be enhanced by the continuation and expansion of the Guaranty Act program;

(4) That the security for the Guaranty Act program which is provided by interest income derived from the investment of state funds pursuant to the Treasury Management Law has been diverted by the continuing use of those funds for other state programs and changes in the state's accounting procedures.

(5) That there exists a severe need for funding and financing of capital improvement projects for the State of Arkansas. That the interest income derived from state funds has limits and that the development of new sources of credit enhancement will expand the use of that interest income for the State of Arkansas.

(6) That the Guaranty Act program will be more effective and provide greater benefits if the security for the guaranties provided under the Guaranty Act can be strengthened and if the Authority's credit rating can be maintained.

(b) For these reasons, the General Assembly finds that there exists in the state an immediate and urgent need to insure the continued viability of the Guaranty Bond program by providing for additional credit enhancement under the Guaranty Act to be utilized only if existing sources of credit enhancement are exhausted and only as specified in this act.

(c) It is declared to be the public policy and responsibility of this state to promote the health, welfare, safety, morals and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises and through the financing of other types of projects which may be guaranteed under the Guaranty Act.

(d) The General Assembly finds that the public policies and

responsibilities of the state as set forth in this section cannot be fully attained without the continuation of the Guaranty Act program and the provision of additional credit enhancement for the program by the authorization of Economic Development Credit Enhancement General Obligation Bonds.

SECTION 3. Definitions.

As used herein, unless the context otherwise requires,

(1) "Act" shall mean the Economic Development Credit Enhancement Act of 1989.

(2) "Authority" shall mean the Arkansas Development Finance Authority created pursuant to the Arkansas Development Finance Authority Act.

(3) "Board" shall mean the Board of Directors of the Authority.

(4) "Bonds" shall mean the Economic Development Credit Enhancement General Obligation Bonds authorized pursuant to Section 4 of this act.

(5) "Bond Guaranty Reserve Account" shall mean the account established by Ark. Code Ann. 15-5-407 to provide credit enhancement for ADFA Bonds.

(6) "ADFA Bonds" shall mean any of the Authority's bonds guaranteed pursuant to the Arkansas Development Finance Authority Bond Guaranty Act of 1985.

(7) "General Revenues" shall have the meaning applied to that term in the Revenue Stabilization Law of Arkansas.

(8) "Guaranty Act" shall mean the Arkansas Development Finance Authority Bond Guaranty Act of 1985.

(9) "State" shall mean the State of Arkansas.

SECTION 4. Economic development credit enhancement bonds - authority to issue.

(a) The Authority is hereby authorized to issue bonds and to have bonds outstanding of the State of Arkansas, to be known as Economic Development Credit Enhancement General Obligation Bonds (the "Bonds"), in a total principal amount not to exceed \$25,000,000, for the sole purpose of generating monies to be used to make amortization payments on ADFA Bonds, but only after satisfaction of the requirements of the following subsection (b).

(b) No bonds shall be issued under this act unless the following circumstances exist:

(i) The Authority shall have pursued all of its remedies under the act and the Guaranty Act to collect amounts due from borrowers in default;

(ii) The annual debt service being paid by the Authority on defaulted ADFA Revenue Bonds has exhausted the Bond Guaranty Reserve Fund or will exhaust that fund within six (6) months; and

(iii) The interest income derived from investments of state funds pursuant to the State Treasury Management Law, received by the State Treasurer, dedicated to the payment of debt service on Guaranty Revenue Bonds pursuant to Ark. Code Ann. 15-5-421 is inadequate to support annual debt service on defaulted Guaranty Revenue Bonds.

(c) The total principal amount of bonds to be issued during any fiscal year shall not exceed \$10,000,000, unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during that fiscal year. Provided further that, before any bonds may be issued under this act, the Authority shall submit to the Governor a written plan describing the need for the issuance of the bonds, including the requirements of Section 3(b). Upon receipt of the plan, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be appropriated from the General Revenues, for payment of debt service in connection with the bonds during either year of that fiscal biennium would require monies from the General Revenues that would work undue hardship on any agency or program supported from General Revenues

under the provisions of the Revenue Stabilization Law.

Upon conclusion of such studies and after obtaining the advice of the Legislative Council thereon, the Governor shall, if he deems the same to be in the public interest, by proclamation, authorize the Authority to proceed with the issuance of the bonds as provided herein.

SECTION 5. Bonds - Terms and Form.

(a) The bonds shall be issued whether or not the interest is subject to federal income taxation, in series, as set forth herein, with the respective series to be designated in alphabetical order and/or by the year in which issued.

(b) The bonds of each series shall have such date as the Authority shall determine and shall mature annually (or be subject to mandatory sinking fund redemption) over a period ending not later than thirty (30) years after the date of the bonds of each series so as to provide annual debt service of approximately equal amounts (insofar as practical) each year throughout the term of the bonds, as determined by the Board. Pending the issuance of bonds hereunder, the Authority may issue temporary notes, to be exchanged for or paid from the proceeds of bonds at such times as bonds may be issued.

(c) The bonds of each series shall bear interest at the rate or rates accepted by the Authority at the sale of the bonds. Interest shall be payable at such times and in such manner as the Authority shall determine.

(d) The bonds may be issued in the form of coupon bonds, payable to bearer, or as bonds registered as to principal only with interest coupons, or as bonds registered as to both principal and interest without coupons; may be in such denomination; may be made exchangeable for bonds of another form or denomination, bearing the same rate of interest and date of maturity; the principal and interest may be made payable at such places within or without the state; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Authority shall determine.

(e) The bonds of each series shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions regarding registration of ownership, as set forth above.

SECTION 6. Bonds - Authorizing resolution.

(a) All bonds issued hereunder shall be authorized by resolution of the Board. Each such resolution shall contain such terms, covenants and conditions applicable to the bonds as are deemed desirable. All bonds issued under this act shall be on a parity as to security. The resolution of the Board may provide for the execution and delivery by the Authority of a trust indenture or trust indentures, with a bank or banks located within or without the state, containing any of the terms, covenants and conditions referred to above, which trust indenture or trust indentures shall be binding upon the state, and its officers and officials, to the extent set forth in this act.

(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved to apply to the payment of debt service on the bonds issued or secured thereunder all or any part of the Authority's revenues, from whatever source derived, and to the extent of such revenues, to release from any requirement of such resolution or trust indenture other revenues and resources of the state, including, without limitation, the General Revenues required to be transferred under Section 11 hereof.

(c) Any resolution or trust indenture adopted or executed under this Section 6 may provide for the retirement and defeasance of the bonds by the depositing in trust of cash or investments maintained for that purpose, and when the provisions of such resolution or trust indenture are complied with such bonds being refunded shall not be deemed to be bonds outstanding for the

purposes of this act.

SECTION 7. Bonds - Execution and delivery.

Each bond shall be signed by the facsimile signatures of the Chairman of the Board of the Authority and the Secretary of the Board of the Authority, and shall have affixed or imprinted thereon the Seal of the Authority. Interest coupons attached to the bonds shall be signed with the facsimile signature of the Secretary of the Board of the Authority. Delivery of the bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

SECTION 8. The bonds may be sold in such manner, either at public or private sale, and upon such terms as the Authority shall determine to be reasonable and expedient for effectuating the purposes of the act. The bonds may be sold at such prices as the Authority may accept, including sale at a discount.

(a) If the bonds are sold at public sale, such public sale shall be on sealed bids, after notice published by the Chairman of the Board for at least one (1) insertion not less than twenty (20) days before the date of the sale in a newspaper published in the City of Little Rock, Arkansas, and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York, which notice shall contain such other terms and provisions as the Authority determines to be desirable. The Authority shall award the sale to the bidder offering to purchase the bonds at a price which results in the lowest net interest cost to the Authority (determined by computing the total interest cost from date to maturity, and deducting therefrom any premium bid and adding thereto the amount of any discount bid); provided, however, the Authority shall reserve the right to reject all bids tendered at such public sale.

(b) If the bonds are sold at a private or negotiated sale, within ninety (90) days following the close of such Bond issue, the Authority shall file with the Legislative Council a written report of the details of the Bond sale, which report shall include a listing of the firms to whom the sale was made, the rate or rates of interest paid for the Bonds, the underwriting fee or discount and other details of the underwriting of the Bonds.

The Authority may employ administrative agents, fiscal agents and legal counsel and may pay them reasonable compensation out of the proceeds of the Bonds. The costs of publication of notices, bond printing, official statements, other documents and other costs associated with the sale, issuance and delivery of the bonds shall be paid from the proceeds of the bonds.

SECTION 9. Deposit of proceeds of sale of bonds.

The net proceeds (being gross proceeds less all expenses of authorizing and issuing the bonds, which shall be first paid out of the proceeds) from the sale of the bonds shall be deposited by the Authority, as received, into the State Treasury to accomplish the purposes of this act, specifically, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds, into trust funds created hereby and designated as follows:

(a) Into the Economic Development Credit Enhancement Fund to provide payment of debt service on ADFA bonds;

(b) Into the Economic Development Credit Enhancement General Obligation Bond Fund (the "Bond Fund"), to provide payment of debt service on bonds issued under this act;

(c) Into the Economic Development Credit Enhancement General Obligation Bond Debt Service Reserve Fund (the "Reserve Fund"), to provide a reserve or reserves for payment of debt service on the bonds.

The Treasurer of State is authorized and directed to establish separate accounts within such funds to correspond to the applicable series of bonds. In addition, there may be created in the State Treasury such other funds, accounts, or any accounts as the Authority may determine in said resolution or trust indenture to be necessary to accomplish the purposes of the act.

SECTION 10. Use of Economic Development Credit Enhancement Fund.

On or before the commencement of each fiscal year, the Chief Fiscal Officer of the Authority shall determine the estimated amount required for payment of all or a part of the debt service on defaulted ADFA bonds and certify that amount to the State Treasurer, who shall make monthly transfers of the certified amount from the Economic Development Credit Enhancement Fund to the Authority's Bond Guaranty Reserve Account.

SECTION 11. Bonds as General Obligations of state - Pledge of revenues.

All bonds issued under this act shall be direct general obligations of the State of Arkansas, for the payment of the debt service on which the full faith and credit of the State of Arkansas are hereby irrevocably pledged so long as any such bonds are outstanding. The bonds shall be payable from the General Revenues of the State, and such amount of general revenues as is necessary is hereby pledged to the payment of the debt service on the bonds, and shall be and remain pledged for such purposes.

SECTION 12. Payment of debt service - Transfer and use of funds.

(a) On or before the commencement of each biennium, the Chief Fiscal Officer of the state shall determine the estimated amount required for payment of the debt service on the bonds issued under this act during such biennium, after making deductions therefrom of estimated monies to be available to the Bond Fund from other sources therefor, and shall certify such estimated amount to the State Treasurer. The State Treasurer who shall then make monthly transfers from the State Apportionment Fund to the Bond Fund to provide for payment of all or part of the debt service on the bonds issued under this act, of that amount of general revenues as shall be required to pay the maturing debt service on bonds issued under this act.

(b) The State Treasurer shall make any additional monthly transfer or transfers of general revenues for allocation as the Chief Fiscal Officer of the state shall certify to him as being required to enable the Authority to establish and thereafter maintain the Reserve Fund to provide a reserve or reserves for payment of debt service on the bonds.

(c) Monies credited to the Bond Fund and the Reserve Fund shall be used only for the purpose of paying debt service on the bonds, either at maturity or on redemption prior to maturity, and for such purposes the State Treasurer is hereby designated disbursing officer to administer such funds in accordance with the provisions of this act.

(d) The Reserve Fund shall be held and used to ensure prompt payment of debt service on the bonds in such manner and pursuant to such conditions as may be specified by the Authority in the resolution or trust indenture authorizing or securing such bonds.

(e) Monies in the Bond Fund and the Reserve Fund over and above the amounts necessary to ensure the prompt payment of debt service on the bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing such bonds.

SECTION 13. Tax exemption - legal investment.

All bonds issued under this act, and interest thereon, shall be exempt

from all taxes of the State of Arkansas, including income, inheritance and property taxes. The bonds shall be eligible to secure deposits of all public funds, and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

SECTION 14. Contract not to be impaired - Remedies of bondholders.

This act shall constitute a contract between the state and the holders and registered owners of all bonds issued hereunder, which contract shall never be impaired. Any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or of any taxpayer. The courts shall, in any such suit against the Authority, the Treasurer of State, or other appropriate officer or official of the state, prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues, by injunction or mandamus. Also and without limitation as to any other appropriate remedy at law or in equity, any bondholder may, by an appropriate action, including, without limitation, injunction or mandamus, compel the performance of all covenants and obligations of the State, its officers and officials, hereunder.

SECTION 15. Creation of rights.

This act shall not create any right of any character and no right of any character shall arise under or pursuant to it, unless and until the first series of bonds authorized by this act shall have been sold and delivered.

SECTION 16. Requirement of voter approval.

No bonds shall be issued under this act except by and with the consent of a majority of the qualified electors of the state voting on the question at the general election of 1990, unless the Governor shall, by proclamation, call a special election to be conducted prior thereto.

(a) If the question is presented at the general election of 1990, notice thereof shall be published by the Secretary of State in a newspaper of general circulation in the State of Arkansas at least sixty (60) days prior to the general election, and notice thereof shall be mailed to the county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

(b) If the question is to be presented at a special election called for that purpose, the special election shall be called by the Governor, by proclamation made at least sixty (60) days prior to the date fixed by that proclamation for the election, and notice of the special election shall be given by publication of the proclamation for one insertion in one newspaper of general circulation published in each county in the state not less than thirty (30) days prior to the date of such election. If there is no such newspaper regularly published in the county, the proclamation may be published in any newspaper having a general circulation in the county.

(c) It shall not be necessary, in the case of the notice for the general election or proclamation of special election, to publish this act itself, but the notice of proclamation shall state that it is issued for the purpose of having the people vote on substantially the following question:

Shall the Arkansas Development Finance Authority be authorized to issue Economic Development credit enhancement general obligation bonds under the authority of the Economic Development Credit Enhancement Act of 1989 in a total principal amount not to exceed \$25,000,000, in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, \$10,000,000 in any fiscal year, which bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?

Whether the question is presented at special election or at the general

election of 1990, the ballot title shall be as follows:

AN ACT TO PERMIT THE ISSUANCE OF ECONOMIC DEVELOPMENT CREDIT
ENHANCEMENT GENERAL OBLIGATION BONDS BY THE ARKANSAS DEVELOPMENT
FINANCE AUTHORITY.

and there shall be printed on the ballot the proposition as stated above, and
the following:

FOR issuance of Arkansas Development Finance
Authority Economic Development Credit
Enhancement General Obligation Bonds _____

AGAINST issuance of Arkansas Development Finance
Authority Economic Development Credit
Enhancement General Obligation Bonds _____

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

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

SECTION 17. Requirement of voter approval.

If a majority of the qualified electors voting on the proposition shall
vote for the issuance of the bonds, the Authority shall proceed with the sale
and issuance of the bonds as provided in this act. If a majority of the
qualified electors voting on the proposition vote against the issuance of the
bonds, none of the bonds authorized by this act shall ever be sold and issued.

SECTION 18. Refunding bonds.

Bonds may also be issued for the purpose of refunding, either at maturity
or in advance maturity, any bonds issued under this act. Such refunding bonds
may either be sold or delivered in exchange for the bonds being refunded. If
sold, the proceeds may either be applied to the payment of bonds being
refunded or deposited in trust and there maintained in cash or investments for
the retirement of the bonds refunded, as shall be specified by the Authority
and the authorizing resolution or trust indenture securing such refunding
bonds. The authorizing resolution or trust indenture securing the refunding
bonds may provide that the refunding bonds shall have the same security for
their payment as provided for the bonds being refunded. Refunding bonds shall
be sold and secured in accordance with provisions of this act pertaining to
the sale and security of the bonds.

SECTION 19. Severability.

If, for any reason, any section or provision of this act shall be held to
be unconstitutional or invalid, such holding shall not affect the remainder of
this act, but this act insofar as it is not in conflict with the Constitution
of this State, or the Constitution of the United States, shall be permitted to
stand, and the various provisions of this act are hereby declared to be
severable for that purpose. All cases involving the validity of this act or
any portion thereof, or in any way arising under this act or involving the

bonds issued hereunder, shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases must be taken within thirty (30) days after the rendition of such judgment or decree.

SECTION 20. Liberal construction.

(a) This act shall be liberally construed to accomplish the purposes thereof. This act shall constitute the sole authority necessary to accomplish the purposes hereof.

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

SECTION 21. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 22. EMERGENCY. It is hereby found and determined by the General Assembly that there is an immediate need for the establishment of an additional procedure to secure the payment of ADFA bonds in order to insure the continued viability of the Guaranty Bond program. For these reasons, it is declared necessary for the preservation of the public peace, health and safety that this act become effective without delay. It is, therefore, declared that an emergency exists, and this act shall take effect from the date of its passage and approval.

APPROVED: March 24, 1989
