

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 690 OF 1995
HOUSE BILL 1825

4 **By: Representatives G. Hendrix and Simmons**

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For An Act To Be Entitled

8 "THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION
9 POOLED LOAN SECURITIZATION ACT OF 1995; AND FOR OTHER
10 PURPOSES."

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Subtitle

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

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19 SECTION 1. Definitions. As used throughout this act, unless the
20 context otherwise requires:

21 (1) "Commission" means the Arkansas Soil and Water Conservation
22 Commission;

23 (2) "Fairness opinion" means a written opinion by the Commission's
24 financial advisor stating that the proposed transaction is structured in a
25 commercially reasonable manner and that the Commission is receiving fair,
26 adequate and equitable consideration in exchange for the sale or pledge of the
27 loans;

28 (3) "Financial advisor" means any entity, either private or
29 governmental, that routinely provides advice to governmental entities
30 regarding their capital improvement and financial needs;

31 (4) "Investors" means any individual, institution or other entity that
32 acquires an interest in loans to be sold or pledged by the Commission;

33 (5) "Loans" means those obligations owed to and owned by the Commission
34 pursuant to those financial assistance programs that the Commission may
35 administer from time to time;

36 (6) "Pledge" means to pledge, encumber, mortgage, hypothecate or

1 otherwise grant a security interest in;

2 (7) "Pool" means to gather together into a single portfolio;

3 (8) "Sell" means to grant, transfer, convey, dispose of or otherwise
4 alienate;

5 (9) "Transaction enhancement" means any form of insurance, any
6 contractual provision, any fund or any other obligation that may be supplied
7 by either the Commission or any third party, which shall serve to enhance the
8 creditworthiness of the pool.

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10 SECTION 2. (a) The Commission is authorized to pledge or sell loans or
11 undivided interests in pools of loans to investors in consideration for the
12 payment to the Commission of cash or cash equivalents.

13 (b) The Commission is further authorized to:

14 (1) Sell the loans or undivided interests in pools of loans to
15 investors at par, a premium or a discount;

16 (2) Pledge the loans or undivided interests in pools of loans to
17 investors as security for repayment of Commission indebtedness to the
18 investors; or,

19 (3) Otherwise use the loans or undivided interests in pools of
20 loans to collateralize or secure other financial relationships with investors
21 as the Commission may deem appropriate.

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23 SECTION 3. The Commission is authorized to supplement its sale, pledge
24 or other use of the loans with any form of transaction enhancement that the
25 Commission may deem appropriate and that the financial advisor deems fair and
26 reasonable. Specifically, the Commission may:

27 (1) Establish a cash reserve against which defaulting loans may be
28 offset;

29 (2) Agree to replace defaulted loans with other loans that the
30 Commission subsequently originates or otherwise possesses;

31 (3) Agree to repurchase defaulted loans;

32 (4) Sell to investors loans having a collective face value in excess of
33 the par value of the consideration received from the pool sale or pledge in
34 order to provide a pool of loans from which defaulting loans can be offset or
35 replaced; or

1 (5) Purchase or provide any other form of transaction enhancement as
2 the Commission may deem necessary.

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4 SECTION 4. Prior to the sale, pledge or other use of the loans or
5 undivided interests in pools of loans the Commission shall retain the services
6 of a financial advisor who shall render prior to the closing of the
7 contemplated transaction a fairness opinion, which shall verify that the loans
8 are properly valued, that the transaction enhancements, if any, are not
9 excessive or unreasonable, and that the terms and conditions of the
10 contemplated transaction are fair and reasonable.

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12 SECTION 5. (a) In no event shall the Commission obligate or pledge the
13 full faith and credit of the State of Arkansas to secure any obligation sold,
14 pledged or placed with investors under this act.

15 (b) The Commission shall not pledge its full faith and credit to secure
16 any obligation sold, pledged or placed with investors under this chapter,
17 provided, however, that the Commission may obligate itself to honor those
18 financial covenants and transaction enhancements that may be associated with
19 the sale or pledge of the loans.

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21 SECTION 6. The Commission is authorized to:

22 (1) Sell participation certificates or other indicia of ownership to
23 investors that shall evidence the investor's ownership of undivided interests
24 in loans or pools of the loans sold pursuant to the provisions of this act;

25 (2) Sell bonds to investors that shall evidence the Commission's
26 obligation to repay principal, interest and redemption premium, if any, to
27 those investors purchasing bonds secured by the loans pursuant to the
28 provisions of this act; or

29 (3) Sell or place any other form of security involving or secured by
30 the loans or pools that the Commission may structure or determine to be
31 appropriate.

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33 SECTION 7. The Commission is authorized to retain the services of bond
34 counsel, financial advisors, underwriters, investment bankers, indenture
35 trustees, portfolio servicers and other professionals in structuring,

1 documenting, selling and servicing the loans and securities contemplated to be
2 issued under this act.

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4 SECTION 8. (a) The Commission is authorized to use the proceeds
5 received from the sale or pledge of the loans:

6 (1) To fund water, sewer, solid waste, flood control, drainage,
7 water pollution abatement, prevention or control, wetlands, irrigation, or
8 other projects that the Commission may fund under the financial assistance
9 programs that it administers from time to time;

10 (2) To provide the matching funding for programs sponsored by
11 state or federal governmental agencies or entities that provide assistance for
12 the types of projects listed in (1); or,

13 (3) For any other lawful purpose that the Commission may identify
14 from time to time.

15 (b) All proceeds from the sale or pledge of the loans or pools of loans
16 under this act shall be deposited into the Arkansas Water Development Fund,
17 the Water Resources and Waste Disposal Revolving Loan Fund, Water, Sewer and
18 Solid Waste Systems Revolving Fund, Arkansas Water Resources Cost Share
19 Revolving Fund, or any other fund or account or combination of funds or
20 accounts that the Commission shall direct.

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22 SECTION 9. The Commission is authorized and empowered to sell or pledge
23 single or multiple series or pools of loans with those amortization and
24 payment schedules and other terms and conditions that the Commission may
25 specify from time to time, including, without limitation, the establishment of
26 debt service reserve funds, capitalized interest funds, cost of issuance
27 funds, defaulted loan reserve accounts and all other forms of accounts or
28 funds that the Commission may deem appropriate.

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30 SECTION 10. All provisions of this act of a general and permanent
31 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
32 Code Revision Commission shall incorporate the same in the Code.

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34 SECTION 11. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 12. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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APPROVED: 3-21-95

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