

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H3/6/97

A Bill

ACT 607 OF 1997
SENATE BILL 355

5 By: Senators Malone, Beebe, Harriman, Fitch, Dowd, Gordon, Todd, Walters, Canada, Russ, Webb, Jeffries, Argue, Scott, Roebuck,
6 Bearden, Mahony, Smith, Bradford, Gwatney, Kennedy, Brown, Hoofman, Bell, and Edwards
7 By: Representatives Ferrell, Allison, Ammons, Angel, Baker, Beatty, Booker, Broadway, Capps, Choate, Courtway, Critcher,
8 Cunningham, Davis, Dawson, DeLay, Faris, French, George, Goodwin, Hall, Harris, Hausam, Hendren, Horn, Hunton, Jeffress,
9 Johnson, Lancaster, Lavery, Maddox, Magnus, McGee, McGinnis, McJunkin, Miller, Milum, Mullenix, Newman, Northcutt, Pappas,
10 Pollan, Purdom, Rodgers, Rorie, Schexnayder, Sheppard, Shoffner, Simmons, Simon, Judy Smith, Teague, Trammell, Vess, Wilkins,
11 Wilkinson, Willems, Wilson, and Young
12
13
14

For An Act To Be Entitled

15 "AN ACT AUTHORIZING THE ARKANSAS SOIL AND WATER
16 CONSERVATION COMMISSION TO ISSUE GENERAL OBLIGATION BONDS
17 IN TOTAL PRINCIPAL AMOUNT NOT TO EXCEED \$300,000,000 IN
18 SERIES FROM TIME TO TIME IN PRINCIPAL AMOUNTS NOT TO
19 EXCEED, WITHOUT PRIOR APPROVAL OF THE GENERAL ASSEMBLY,
20 \$60,000,000 IN ANY FISCAL BIENNIUM, FOR THE PURPOSE OF
21 FINANCING AND REFINANCING THE DEVELOPMENT OF WATER, WASTE
22 DISPOSAL, POLLUTION CONTROL, ABATEMENT AND PREVENTION,
23 DRAINAGE, IRRIGATION, FLOOD CONTROL AND WETLANDS PROJECTS
24 TO SERVE THE CITIZENS OF THE STATE OF ARKANSAS; SUBMITTING
25 THE QUESTION OF ISSUANCE OF BONDS AT THE 1998 GENERAL
26 ELECTION OR A SPECIAL ELECTION CALLED FOR THAT PURPOSE;
27 PRESCRIBING OTHER MATTERS RELATING THERETO; AND FOR OTHER
28 PURPOSES."

29

Subtitle

31 "AUTHORIZING THE ARKANSAS SOIL AND WATER
32 CONSERVATION COMMISSION TO ISSUE GENERAL
33 OBLIGATION BONDS IN TOTAL PRINCIPAL
34 AMOUNT NOT TO EXCEED \$300,000,000."
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36 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. This Act may be referred to and cited as the "Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997".

SECTION 2. (a) The Arkansas Soil and Water Conservation Commission is hereby authorized to issue bonds of the State of Arkansas to be known as State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds (the "Bonds"), in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), for the purposes set forth herein. The Bonds may be issued in one or more series as required subject to the conditions and in compliance with the procedures set forth herein.

(b) The total principal amount of Bonds to be issued during any fiscal biennium shall not exceed Sixty Million Dollars (\$60,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium. Provided further that, before any Bonds may be issued during any fiscal biennium the Commission shall submit to the Governor a written plan (1) setting forth the criteria to be used by the Commission in choosing (A) the Projects to be financed with the proceeds derived from the sale of the Bonds and/or (B) the programs for which funds may be provided by the Commission to finance Projects, and (2) requesting authorization for the projected maximum principal amount of Bonds required to be issued in such fiscal biennium. Upon receipt thereof, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the General Revenues of the State, as such term is used in the Revenue Stabilization Law of Arkansas, for payment of debt service requirements in connection with the Bonds during either year of the fiscal biennium in which the Bonds are to be issued, would require moneys from the General Revenues of the State that would work undue hardship upon any agency or program supported from the General Revenues of the State under the provisions of the Revenue Stabilization Law of Arkansas.

(c) 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 Commission to proceed with the issuance of the Bonds, in one or more series, up to the

1 maximum principal amount for the fiscal biennium approved by the Governor.

2 (d) If the Governor shall decline or refuse to give his approval for
3 the issuance of such Bonds by declining to issue a proclamation approving the
4 issuance, the Governor shall promptly notify the Commission, in writing, and
5 such Bonds shall not be issued. But the Commission may resubmit a request to
6 the Governor for the approval of the issuance of the Bonds. The issue as
7 resubmitted to the Governor shall be dealt with in the same manner as provided
8 for the initial request for authority to issue the Bonds.

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10 SECTION 3. The Commission may contract with the Authority (1) to act as
11 servicer of any loans made to, or of bonds purchased from, any Local Entities
12 or (2) to perform any other administrative service, activity, undertaking or
13 function of the Commission in connection with the issuance and sale of a
14 particular series of the Bonds. The Commission is authorized to pay the
15 Authority for any services provided by the Authority. Any contract shall be
16 authorized by independent resolutions of the Commission and the Authority.

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18 SECTION 4. In this Act, unless the context otherwise requires,

19 (a) "Authority" means the Arkansas Development Finance Authority and
20 any successor agency or department.

21 (b) "Commission" means the Arkansas Soil and Water Conservation
22 Commission, and any successor agency or department;

23 (c) "debt service" means principal, interest, redemption premiums, if
24 any, and trustees', paying agents' and dissemination agents' and like
25 servicing fees relative to the Bonds;

26 (d) "develop" means to plan, design, construct, acquire (by purchase
27 or, as set forth herein, by eminent domain), own, operate, rehabilitate, lease
28 as lessor or lessee, enter into lease-purchase agreements with respect to,
29 lend, make grants in respect of, or install or equip any lands, buildings,
30 improvements, machinery, equipment, or other properties of whatever nature,
31 real, personal or mixed;

32 (e) "drainage" means the removal or diversion of water from lands
33 through natural or artificial means;

34 (f) "FDIC" means the Federal Deposit Insurance Corporation, or any
35 successor thereto insuring deposits of commercial banks;

36 (g) "flood control" means (1) drainage and flood prevention

1 improvements for protection from water-induced damages, (2) adjustments in
2 land use and facilities designed to reduce flood damage from overflow or
3 backwater due to major storms and snowmelt, and (3) facilities designed to
4 collect and convey runoff from rainfall or snowmelt to natural watercourses or
5 previously-modified natural waterways;

6 (h) "General Revenues of the State" means the revenues described and
7 enumerated in Subchapter 2 of the Revenue Classification Law of Arkansas or in
8 any successor law;

9 (i) "irrigation" means the production or transportation of water for
10 agricultural uses through artificial or natural conveyances for watering of
11 crops or other agricultural products;

12 (j) "Local Entity" means any nonprofit corporation, or any county,
13 municipality, conservation district, improvement district, drainage district,
14 irrigation district, levee district, regional water distribution district,
15 public facilities board, rural development authority, regional wastewater
16 treatment district, regional solid waste management district, rural water
17 association or school district in the State or any agency or instrumentality
18 of any of the foregoing, or any agency or instrumentality of the State,
19 including the Commission;

20 (k) "Nationally recognized rating agency" means Moody's Investors
21 Service, Inc., Standard & Poor's Ratings Group, or any other nationally
22 recognized rating agency approved by the State Investing Office;

23 (l) "Person" means any Local Entity or any individual, corporation,
24 trust, limited liability company or partnership;

25 (m) "Pollution abatement" means reduction, prevention, recycling,
26 control or elimination by appropriate methods of contamination or pollution,
27 or other alteration of the physical, chemical or biological properties, of any
28 land or waters of the State, or of such discharge of any liquid, gaseous or
29 solid substance as will or is likely to create a nuisance or render any land
30 or waters of the State harmful or detrimental or injurious to public health,
31 safety or welfare of individuals, or to domestic, commercial, industrial,
32 agricultural, recreational, or other legitimate beneficial uses, or to
33 livestock, wild animals, birds, fish or other aquatic life;

34 (n) "Prior Acts" means, collectively, Act No. 496 of 1981, as now or
35 hereafter amended, codified as A.C.A. § 15-22-601 et seq., and Act No. 686 of
36 1987, as now or hereafter amended, codified as A.C.A. § 15-22-701 et seq.;

1 (o) "Project" or "Projects" means any lands, buildings, improvements,
2 machinery, equipment, or other property, real, personal or mixed, or any
3 combination thereof and programs using such property, developed in pursuance
4 of all or any of the purposes of this Act, including but not limited to the
5 following: (1) the production, impoundment, treatment and transportation of
6 water, (2) the collection, treatment and disposition of waste, (3) pollution
7 abatement programs, (4) drainage or flood control facilities, (5) irrigation
8 facilities, (6) the preservation and development of wetlands, and (7) any
9 facilities authorized by or pursuant to the Prior Acts. Included are Projects
10 for agricultural, administrative, research, residential, recreational,
11 commercial and industrial purposes and Projects for the use and benefit of
12 Local Entities, the Commission and other Persons. Included are facilities and
13 improvements which are necessary, ancillary or related to those enumerated;

14 (p) "Project Costs" means all or any part of the costs of developing
15 any Project, costs incidental or appropriate thereto including, without
16 limitation, all costs to the Commission associated with the development or
17 operation of any Project in a supervisory capacity, and costs incidental or
18 appropriate to the financing thereof, including, without limitation,
19 capitalized interest, costs of issuance of and appropriate reserves for the
20 Bonds, loan or commitment fees, loan or grant administration fees and costs
21 for engineering, legal, and other administrative and consultant services;

22 (q) "Revenue Classification Law of Arkansas" means Act No. 808 of 1973,
23 as now or hereafter amended, codified as A.C.A. § 19-6-101 et seq.;

24 (r) "Revenue Stabilization Law of Arkansas" means Act No. 750 of 1973,
25 as now or hereafter amended, codified as A.C.A. § 19-5-101 et seq.;

26 (s) "State" means the State of Arkansas;

27 (t) "State Apportionment Fund" means the fund by that name created by
28 Subchapter 2 of the Revenue Stabilization Law of Arkansas or in any successor
29 law;

30 (u) "State Investing Office" shall mean the State Treasurer for the
31 investment of any funds established on the books of the State Treasury, and
32 the Commission and/or the Authority for the investment of any funds held
33 outside the State Treasury.

34 (v) "Water" means any waters of the State, including surface water and
35 ground water;

36 (w) "Waste" means any liquid or solid produced as an undesirable

1 byproduct of any activity; and

2 (x) "Wetlands" means land that (1) has a predominance of hydric soils,
3 (2) is inundated or saturated by surface or ground water at a frequency and
4 duration sufficient to support a prevalence of hydrophytic vegetation
5 typically adapted for life in saturated soil conditions, and (3) under normal
6 circumstances does support a prevalence of such vegetation.

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8 SECTION 5. (a) The Bonds shall be issued, in series, as set forth
9 herein, in amounts sufficient to finance or refinance all or any part of
10 Project Costs with the respective series to be designated in alphabetical
11 order and/or by the year in which issued.

12 (b) Each series of the Bonds shall have such date as the Commission
13 shall determine and shall mature or be subject to mandatory sinking fund
14 redemption as determined by the Commission, over a period ending not later
15 than thirty-five (35) years after the date of the Bonds of each series.
16 Pending the issuance of Bonds hereunder, the Commission may issue temporary
17 notes, maturing not more than five (5) years from the date of issuance, to be
18 exchanged for or paid from the proceeds of Bonds at such time as the Bonds may
19 be issued.

20 (c) Each series of the Bonds shall bear interest, whether or not
21 subject to federal income taxation, at the rate or rates accepted by the
22 Commission. Interest shall be payable at such times as the Commission shall
23 determine.

24 (d) The Bonds may be issued in such form; may be in such denominations;
25 and may be made exchangeable for Bonds of another form or denomination,
26 bearing the same rate of interest and date of maturity; may be made payable at
27 such places within or without the State; may be made subject to redemption
28 prior to maturity in such manner and for such redemption prices; and may
29 contain such other terms and conditions, all as the Commission shall
30 determine.

31 (e) The Bonds shall have all the qualities of negotiable instruments or
32 securities under the laws of the State, subject to the provision for
33 registration of ownership.

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35 SECTION 6. Bonds issued under this Act shall be issued for the purpose
36 of financing (on a temporary or permanent basis), refinancing and developing

1 one or more Projects, and the proceeds of the Bonds shall be applied to the
2 payment of Project Costs and the costs and expenses of issuance of the Bonds,
3 or in connection with a Project refinancing, the repayment of indebtedness
4 incurred to pay Project Costs or for refunding of Bonds as provided in Section
5 14.

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7 SECTION 7. (a) The Bonds shall be authorized by resolution of the
8 Commission. Each such resolution shall contain such terms, covenants, and
9 conditions as are deemed desirable, including, without limitation, those
10 pertaining to the establishment and maintenance of funds and accounts, to the
11 deposit and investment of revenues and of Bond proceeds and to the rights and
12 obligations of the State, its officers and officials, the Commission and the
13 registered owners of the Bonds. The resolution of the Commission may provide
14 for the execution and delivery by the Commission of a trust indenture or trust
15 indentures, with one or more banks or trust companies located within or
16 without the State, containing any of the terms, covenants, and conditions
17 referred to above, which trust indenture or trust indentures shall be binding
18 upon the State, and its agencies, officers and officials, to the extent set
19 forth in this Act.

20 (b) Any resolution or trust indenture adopted or executed under this
21 Section shall provide that power is reserved to apply to the payment of debt
22 service on the Bonds issued or secured thereunder all or any part of the
23 revenues which may be derived from any Project financed by such Bonds or
24 financed by the Commission or the Authority in some other manner; and, to the
25 extent of such revenues which the Commission elects to apply to debt service,
26 to release from any requirement of such resolution or trust indenture other
27 revenues and resources of the State, including, without limitation, the
28 General Revenues of the State required to be transferred under Section 12
29 hereof.

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31 SECTION 8. Each Bond shall be signed with the manual or facsimile
32 signatures of the Governor, the Chairman of the Commission and the Treasurer
33 of State, and shall have affixed, imprinted or lithographed thereon the Great
34 Seal of the State. Interest coupons attached to the Bonds, if any, shall be
35 signed with the facsimile signature of the Treasurer of State. Delivery of
36 the Bonds and coupons so executed shall be valid, notwithstanding any change

1 in persons holding such offices occurring after the Bonds have been executed.

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3 SECTION 9. The Bonds may be sold in such manner, either at public or
4 private sale, and upon such terms as the Commission shall determine to be
5 reasonable and expedient for effectuating the purposes for which the
6 Commission was created. The Bonds may be sold at the price the Commission
7 determines acceptable, including sale at a discount. The Commission may
8 employ administrative agents, fiscal agents, underwriters, architects,
9 accountants, engineers and legal counsel and may pay them reasonable
10 compensation from the proceeds of the Bonds. The fees of any trustee or
11 paying agent, as well as the costs of publication of notices and of printing
12 of the Bonds, official statements and other documents relating to the sale of
13 the Bonds, the fees of any rating agency and other reasonable costs of issuing
14 and selling the Bonds incurred by the Commission and the Authority may be paid
15 from the proceeds of the Bonds.

16

17 SECTION 10. (a) The proceeds from the sale of the Bonds, together with
18 all revenues derived by the Commission (i) from any Project financed or
19 refinanced under this Act and appropriated, allocated or otherwise set aside
20 by the Commission for the payment of the Bonds and (ii) from any other Project
21 and appropriated, allocated or otherwise set aside by the Commission for the
22 payment of the Bonds, shall be deposited by the recipient thereof, as
23 received, into trust funds either established in the State Treasury, or into
24 accounts established outside the State Treasury in the name of the Commission
25 or the Authority, to accomplish the purposes of this Act, in amounts or
26 portions as set forth in the resolution or trust indenture authorizing or
27 securing the Bonds issued to finance or refinance the development of Projects.
28 There is hereby established as a trust fund in the State Treasury an account
29 designated as the Water, Waste Disposal and Pollution Abatement Facilities
30 Bond Fund (the "Bond Fund"), which is being created to provide for payment of
31 all or a part of the debt service on Bonds issued under this Act.

32 The Treasurer of the State is authorized and directed to establish
33 separate accounts and subaccounts within the Bond Fund to correspond to the
34 applicable series of Bonds. In addition, there may be created in the State
35 Treasury such other funds, accounts or subaccounts as the Commission may
36 determine to be necessary to accomplish the purposes of this Act.

1 (b) All procedures and methods for the application of proceeds of any
2 series of Bonds to the financing or refinancing of Project Costs shall be set
3 forth in writing, which writings shall be maintained as a part of the records
4 of the Commission. Such procedures and methods may include, but are not
5 limited to, the following:

6 (1) Development of Projects to be owned, operated and maintained by the
7 Commission;

8 (2) Grants to Local Entities and the Commission;

9 (3) Loans to Local Entities or Persons or the purchase of bonds or
10 other general or special obligation debt of Local Entities;

11 (4) Development of Projects to be leased to or operated by Local
12 Entities;

13 (5) Development of Projects to be purchased, at one time or by
14 installment purchase, by Local Entities;

15 (6) Establishment of funds, including revolving funds (i.e., funds for
16 the lending of money to Persons to be repaid into such funds) for the
17 development of Projects;

18 (7) Matching of proceeds of Bonds with moneys provided by Local
19 Entities, or other Persons;

20 (8) Matching of moneys provided pursuant to other laws, including
21 Arkansas Code of 1987 Annotated Title 15, Chapter 22, Subchapter 5; Title 15,
22 Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1; Title 15,
23 Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9; and

24 (9) Establishment of funds to refund or refinance Bonds issued under
25 this Act, bonds issued under the Prior Acts and the bonds or other debt of
26 Local Entities which were incurred for the purpose of paying Project Costs.

27 (c) Any arrangements undertaken pursuant to (b), above, whereby a Local
28 Entity will administer funds composed in whole or in part of proceeds of Bonds
29 shall include provision for the auditing, no less frequently than annually, of
30 such funds.

31 (d) The proceeds from the sale of the Bonds, together with all revenues
32 derived by the Commission (i) from any Project financed or refinanced under
33 this Act or (ii) from any other Project and appropriated, allocated or
34 otherwise set aside by the Commission for the payment of the Bonds, may be
35 invested and reinvested by the State Investing Office in any of the
36 following:

1 (1) direct obligations of the United States of America (including
2 obligations issued or held in book-entry form on the books of the Department
3 of the Treasury) or obligations the principal of and interest on which are
4 unconditionally guaranteed by the United States of America;

5 (2) bonds, debentures, notes or other evidences of indebtedness issued
6 or guaranteed by any United States government agencies provided, however, such
7 obligations are backed by the full faith and credit of the United States of
8 America;

9 (3) senior debt obligations issued or guaranteed by United States
10 government agencies (non-full faith and credit agencies);

11 (4) money market funds investing exclusively in the investments
12 described in clauses (1) through (3) of this subsection (d);

13 (5) certificates of deposit providing for deposits secured at all times
14 by collateral described in clauses (1) through (3) of this subsection (d).
15 Such certificates must be issued by commercial banks whose deposits are
16 insured by the FDIC and whose collateral must be held by a third party, and
17 the State Investing Office, or assigns, must have a perfected first security
18 interest in the collateral;

19 (6) certificates of deposit, savings accounts, deposit accounts or
20 money market deposits, all of which are fully insured by the FDIC;

21 (7) bonds or notes issued by the State or any municipality, county or
22 school district, community college district or regional solid waste management
23 district in the State, or any agency or instrumentality thereof;

24 (8) investment agreements with financial institutions or insurance
25 companies which are rated in one of the two highest rating categories of a
26 nationally recognized rating agency;

27 (9) repurchase agreements providing for the transfer of securities from
28 a dealer bank or securities firm (seller/borrower) to the State Investing
29 Office (buyer/lender), and the transfer of cash from the State Investing
30 Office to the dealer bank or securities firm with an agreement that the dealer
31 bank or securities firm will repay the cash plus a yield to the State
32 Investing Office in exchange for the securities at a specified date.
33 Repurchase agreements must satisfy the following criteria:

34 (A) Repurchase agreements must be between the State Investing
35 Office and a dealer bank or securities firm described as follows:

36 (i) Dealers with at least \$100 million in capital, or

1 (ii) Banks whose deposits are insured by the FDIC.

2 (B) The written repurchase agreement contract must include the
3 following:

4 (i) Securities which are acceptable for transfer are those
5 listed in clauses (1) through (3) of this subsection.

6 (ii) The term of the repurchase agreement may be up to 30
7 days.

8 (iii) The collateral must be delivered to the State
9 Investing Office, trustee (if trustee is not supplying the collateral) or
10 third party acting as agent for the trustee (if the trustee is supplying the
11 collateral) before/simultaneous with payment (perfection by possession of
12 certificated securities);

13 (iv) Valuation of Collateral: The securities must be
14 valued weekly, marked-to-market at current market price plus accrued interest.
15 The value of collateral must be equal to 103% of the amount of cash
16 transferred by the State Investing Office to the dealer bank or security firm
17 under the repurchase agreement plus accrued interest. If the value of
18 securities held as collateral declines below 103% of the value of the cash
19 transferred by the State Investing Office, then additional cash and/or
20 acceptable securities must be transferred and held by the State Investing
21 Office; and

22 (10) any other investment authorized by State law.

23
24 SECTION 11. The Bonds shall be the direct general obligations of the
25 State, for the payment of debt service on which the full faith and credit of
26 the State are hereby irrevocably pledged so long as any such Bonds are
27 outstanding. The Bonds shall be payable from the General Revenues of the
28 State, and such amount of General Revenues of the State as is necessary is
29 hereby pledged to the payment of debt service on the Bonds, and shall be and
30 remain pledged for such purposes.

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32 SECTION 12. On or before commencement of each fiscal year, the Chief
33 Fiscal Officer of the State shall determine the estimated amount required for
34 payment of all or a part of the debt service on the Bonds issued under this
35 Act during such fiscal year and deduct therefrom the estimated moneys to be
36 available to the Commission from other sources to determine what amount of

1 General Revenues of the State will be required. The Chief Financial Officer
2 of the State shall certify such estimated amount to the Treasurer of State.
3 The Treasurer of State shall then make monthly transfers from the State
4 Apportionment Fund to the Bond Fund, of such amount of General Revenues of the
5 State as shall be required to pay the maturing debt service on Bonds issued
6 under this Act.

7 The obligation to make monthly transfers of General Revenues of the
8 State from the State Apportionment Fund to the Bond Fund shall constitute a
9 first charge against such general revenues of the State prior to all other
10 uses to which such general revenues of the State are devoted, either under
11 present law or under any laws that may be enacted in the future; provided
12 however, that to the extent other general obligation bonds of the State may
13 have been issued or may subsequently be issued, all such general obligation
14 bonds shall rank on a parity of security with respect to payment from general
15 revenues of the State.

16 Moneys credited to the Bond Fund shall be used only for the purpose of
17 paying debt service on the Bonds, either at maturity or upon redemption prior
18 to maturity, and for such purposes the Treasurer of State is hereby designated
19 Disbursing Officer to administer such funds in accordance with the provisions
20 of this Act.

21 Moneys in the Bond Fund over and above the amount necessary to insure
22 the prompt payment of debt service on the Bonds, and the establishment and
23 maintenance of a reserve fund, if any, may be used for the redemption of Bonds
24 prior to maturity in the manner and in accordance with the provisions
25 pertaining to redemption prior to maturity, as set forth in the resolution or
26 trust indenture authorizing or securing the Bonds.

27

28 SECTION 13. All Bonds issued under this Act, and interest thereon,
29 shall be exempt from all State, county and municipal taxes, including income,
30 inheritance and property taxes. The Bonds shall be eligible to secure
31 deposits of all public funds, and shall be legal for investment of bank,
32 fiduciary, insurance company, trust, and public funds.

33

34 SECTION 14. (a) Bonds may be issued under this Act for the purpose of
35 refunding any outstanding bonds issued pursuant to this Act or to refund any
36 outstanding bonds of the Commission issued pursuant to the Prior Acts. The

1 Commission shall not be required to include Bonds issued pursuant to this
2 Section in any written plan submitted to the Governor under Section 2(b) of
3 this Act, and such Bonds shall not be subject to the requirements for the
4 approval and proclamation of the Governor as set forth in Section 2(c).

5 (b) The refunding bonds may be either sold for cash or delivered in
6 exchange for the outstanding obligations. If sold for cash, the proceeds may
7 be either applied to the payment of the obligations refunded or deposited in
8 irrevocable trust for the retirement thereof either at maturity or on an
9 authorized redemption date.

10 (c) Refunding bonds shall in all respects be authorized, issued, and
11 secured in the manner provided for the bonds being refunded, and shall have
12 all the attributes of the refunded bonds. To the extent that the refunding
13 bonds are not in a greater principal amount than the outstanding principal
14 amount of the bonds being refunded, the principal amount of such refunding
15 bonds shall not be subject to the \$300,000,000 limit set forth in Section 2
16 (a) or the \$60,000,000 limit set forth in Section 2(b) of this Act.

17 (d) The resolution or trust indenture under which the refunding bonds
18 are issued shall provide that any refunding bonds shall have the same priority
19 of payment as was enjoyed by the obligations refunded thereby.

20

21 SECTION 15. The Commission, in addition to powers conferred under other
22 laws, shall have the power under this Act to take such action as may be
23 appropriate to carry out the purposes of this Act, and including the power:

24 (a) to develop Projects;

25 (b) to operate and maintain Projects;

26 (c) to acquire absolute title to and use for any purpose and at any
27 place, water stored in any reservoir, or other impoundment;

28 (d) to acquire, collect, impound, store, transport, distribute, sell,
29 furnish and dispose of water to any person at any place;

30 (e) to purify, treat and process water;

31 (f) to assist Local Entities in the preparation of their premises for
32 the use of water furnished by the Commission and to construct upon such
33 premises Project properties of any kind and character and, in connection
34 therewith, to receive, acquire, endorse, pledge, hypothecate and dispose of
35 notes, bonds, and other evidences of indebtedness;

36 (g) to use the bed of any watercourse without adversely affecting

1 existing riparian rights, any highway or any right-of-way, easement or other
2 similar property rights, or any tax forfeited land owned or held by the State
3 or by any political subdivision thereof;

4 (h) to provide loans and grants from Bond proceeds or Project revenues
5 to Local Entities and to authorize Local Entities to make loans to other
6 Persons, for payment of Project Costs in order for the Local Entity receiving
7 such funds to develop a Project;

8 (i) to purchase with Bonds proceeds or Project revenues bonds or notes
9 from a Local Entity in order to provide funds for payment of Project Costs in
10 order for the Local Entity receiving such funds to develop a Project, and to
11 enter into note and bond purchase agreements in connection therewith;

12 (j) to appropriate amounts from Bond proceeds to satisfy State matching
13 requirements for federal grants, subsidies and revolving loan funds
14 established by the Congress of the United States for the purpose of
15 facilitating water, waste disposal, pollution control, abatement and
16 prevention, drainage, irrigation, flood control and wetlands projects;

17 (k) to appropriate amounts from Bond proceeds for the matching of
18 moneys provided pursuant to other laws, including particularly, without
19 limitation, Arkansas Code of 1987 Annotated Title 15, Chapter 22, Subchapter
20 5; Title 15, Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1;
21 Title 15, Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9;

22 (l) to construct or cause to be constructed, lease as lessee, lease as
23 lessor, and in any manner acquire, own, hold, maintain, operate, sell, dispose
24 of, exchange, mortgage, or lend with respect to all or any part of any
25 Project;

26 (m) to acquire, own, hold, use, exercise, sell, mortgage, pledge,
27 hypothecate, and in any manner to dispose of franchises, rights, privileges,
28 licenses, rights-of-way and easements necessary, useful, or appropriate for
29 the exercise of the powers or implementation of the purposes set forth in this
30 Act;

31 (n) to sell and convey, mortgage, pledge, lease as lessor, enter into
32 lease-purchase agreements with respect to, and otherwise dispose of all or any
33 part of any Project or other properties, tangible or intangible, including,
34 without limitation, franchises, rights, privileges, licenses, rights-of-way
35 and easements;

36 (o) to have and exercise the right of eminent domain for the purpose of

1 acquiring lands (the fee title thereto or any easement, right-of-way or other
2 interest or estate therein) for Projects or portions thereof, by the procedure
3 now provided for condemnation by municipal corporations by Act No. 269 of
4 1957, as now or hereafter amended, codified as A.C.A. § 18-15-401 et seq.;

5 (p) to make or accept gifts or grants of moneys, services, franchises,
6 rights, privileges, licenses, rights-of-way, easements or other property, real
7 or personal or mixed;

8 (q) to make any and all contracts necessary or convenient for the
9 exercise of the powers or implementation of the purposes set forth in this
10 Act;

11 (r) to fix, regulate and collect rates, fees, rents or other charges
12 for making any loan or commitment under this Act, for performing accounting
13 and loan servicing duties relating to such loans and for the use of any
14 properties or services furnished by the Commission, and with respect thereto
15 the Commission shall not be subject to the jurisdiction or control of the
16 Arkansas Public Service Commission;

17 (s) to require audits of all accounts related to construction,
18 operation, or maintenance of any Project funded by this Act;

19 (t) to take reasonable actions necessary to insure that debt service
20 requirements are met;

21 (u) to refinance loans made by the Commission from whatever source to
22 Local Entities in order to develop a Project;

23 (v) to provide loans from Bond proceeds or Project revenues to Local
24 Entities for the purpose of refinancing indebtedness of the Local Entity
25 incurred for the purpose of developing a Project;

26 (w) to purchase with Bond proceeds or Project revenues bonds or notes
27 from a Local Entity in order to provide funds to refinance indebtedness
28 incurred by a Local Entity for the purpose of developing a Project; and

29 (x) to take such other action as may be appropriate to accomplish the
30 purposes of this Act.

31

32 SECTION 16. This Act shall constitute a contract between the State and
33 the registered owners of all Bonds issued hereunder which shall never be
34 impaired, and any violation of its terms, whether under purported legislative
35 authority or otherwise, shall be enjoined by the courts at the suit of any
36 bondholder or any taxpayer. The courts shall, in like suit against the

1 Commission, the Treasurer of State, or other appropriate agency, officer or
2 official of the State, prevent a diversion of any revenues pledged hereunder
3 and shall compel the restoration of diverted revenues, by injunction or
4 mandamus. Also, and without limitation as to any other appropriate remedy at
5 law or in equity, any bondholder may, by an appropriate action, including
6 without limitation, injunction or mandamus, compel the performance of all
7 covenants and obligations of the State, its officers and officials, hereunder.

8
9 SECTION 17. (a) This Act shall not create any right of any character
10 and no right of any character shall arise under or pursuant to it, unless and
11 until the first series of Bonds authorized by this Act shall have been sold
12 and delivered.

13 (b) The issuance of Bonds authorized by this Act shall not impair or
14 affect any outstanding bonds of the Commission issued pursuant to the Prior
15 Acts.

16
17 SECTION 18. No Bonds shall be issued under this Act except by and with
18 the consent of a majority of the qualified electors of the State voting on the
19 question in substantially the form described in this Section at the general
20 election of 1998 unless the Governor shall, by proclamation, call a special
21 election to be conducted prior thereto. If the question is presented at the
22 general election of 1998, notice thereof shall be published by the Secretary
23 of State by one insertion in a newspaper of general circulation in the State
24 at least sixty (60) days prior to the general election, and notice thereof
25 shall be mailed to each county board of election commissioners and the sheriff
26 of each county at least sixty (60) days prior to the general election.

27 If a special election is called by the Governor, the proclamation
28 thereof shall be made at least sixty (60) days prior to the date fixed by such
29 proclamation for the election, and notice of the special election shall be
30 given by publication of the proclamation for one insertion in one newspaper of
31 general circulation published in each county in the State not less than thirty
32 (30) days prior to the date of such election. If there is no newspaper
33 regularly published in a county, the proclamation may be published in any
34 newspaper having a general circulation in the county. It shall not be
35 necessary, in the case of the notice or proclamation for the election, to
36 publish this Act in its entirety, but the notice or proclamation shall state

1 that it is issued for the purpose of submitting to the people substantially
2 the following question:

3 Shall the Arkansas Soil and Water Conservation Commission be authorized
4 to issue General Obligation Bonds under the authority of the Arkansas Water,
5 Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 in
6 total principal amount not to exceed Three Hundred Million Dollars
7 (\$300,000,000), in series from time to time in principal amounts not to
8 exceed, without prior approval of the General Assembly, Sixty Million Dollars
9 (\$60,000,000) in any fiscal biennium, for the financing and refinancing of the
10 development of water, waste disposal, water pollution control, abatement and
11 prevention, drainage, irrigation, flood control and wetlands projects to serve
12 the citizens of the State of Arkansas, which Bonds shall be secured by a
13 pledge of the full faith and credit of the State of Arkansas?

14 Whether the question is presented at special election or at the general
15 election of 1998, the title of this Act shall be the ballot title, and there
16 shall be printed on the ballot the proposition as stated above, and the
17 following:

18 FOR Issuance of State of Arkansas Water, Waste Disposal and Pollution
19 Abatement Facilities General Obligation Bonds _____

20 AGAINST Issuance of State of Arkansas Water, Waste Disposal and Pollution
21 Abatement Facilities General Obligation Bonds _____

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

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

36

1 SECTION 19. If a majority of the qualified electors voting on the
2 question shall vote for the issuance of the Bonds, the Commission shall
3 proceed with the sale and the issuance of the Bonds as provided in this Act.
4 If a majority of the qualified electors voting on the question vote against
5 the issuance of the Bonds, none of the Bonds authorized by this Act shall ever
6 be sold or issued, and all provisions of the Act shall be of no further
7 effect.

8
9 SECTION 20. The authority to issue bonds under Section 2 of this Act in
10 an aggregate principal amount not to exceed Three Hundred Million Dollars
11 (\$300,000,000) shall be reduced by the principal amount of bonds issued for
12 non-refunding purposes under the Prior Acts after the effective date of this
13 Act.

14
15 SECTION 21. If, for any reason, any Section or provision of this Act
16 shall be held to be unconstitutional or invalid for any reason, such holding
17 shall not effect the remainder of this Act, but this Act, insofar as it is not
18 in conflict with the Constitution of the State or the Constitution of the
19 United States, shall be permitted to stand, and the various provisions of this
20 Act are hereby declared to be severable for that purpose. Any case involving
21 the validity of this Act or involving the Bonds issued hereunder, shall be
22 deemed of public interest and shall be advanced by all courts and heard as a
23 preferred cause, and all appeals from judgments or decrees rendered in such
24 cases must be taken within thirty (30) days after rendition of such judgment
25 or decree.

26
27 SECTION 22. (a) This Act shall be liberally construed to accomplish
28 the purposes thereof. This Act shall constitute the sole authority necessary
29 to accomplish the purposes hereof, and to this end it shall not be necessary
30 that the provisions of other laws pertaining to the development of public
31 facilities and properties and the financing thereof be complied with.

32 (b) This Act shall be interpreted to supplement existing laws
33 conferring rights and powers upon the Commission, and the rights and powers
34 set forth herein shall be regarded as alternate methods for the accomplishment
35 of the purposes of this Act.

36 (c) Nothing set forth in this Act shall be construed to repeal or to

1 reduce the powers conferred by the Prior Acts.

2

3 SECTION 23. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same in the Code.

6

7 SECTION 24. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

12

13 SECTION 25. All laws and parts of laws in conflict with this act are
14 hereby repealed.

15

/s/ Sen. Malone et al

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17

APPROVED:3-18-97

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