

Act 497 of the 1989 Regular Session.

Act 497

SB439

By: Senator Benham

"AN ACT AMENDING ARKANSAS CODE 14-164-329 AND 337 TO PROVIDE A PROCEDURE FOR TERMINATING THE COLLECTION OR PLEDGE OF A LOCAL SALES AND USE TAX RELATING TO CAPITAL IMPROVEMENT BONDS ISSUED PURSUANT TO AMENDMENT NO. 62 TO THE ARKANSAS CONSTITUTION; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY."

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

SECTION 1. Arkansas Code 14-164-329 is hereby amended to read as follows:

"14-164-329. Capital improvement bonds - Local sales and use tax - Effective dates for imposition and termination of tax levy.

(a) The levy of such tax shall not be effective until after the election has been held and the issuance of bonds has been approved by the voters.

(b) In order to provide time for the preparations for election set forth herein and to provide for the accomplishment of the administrative duties of the director, the following effective dates are applicable with reference to any such ordinance levying such tax:

(1) If no election challenge is filed within thirty (30) days of the date of the publication of the proclamation of the results of the election, the tax shall become effective on the first day of the first calendar month subsequent to the expiration of the thirty-day period for challenge.

(2) In the event of an election contest, the effective date of the tax levy shall be the first day of the first calendar month subsequent to the final determination of such litigation.

(c) The tax shall be abolished when there are no bonds outstanding to which such tax collections are pledged as provided in this subchapter. Bonds shall not be deemed to be outstanding hereunder if the trustee for the bondholders provides the certificate provided for in (a) below. In order to provide for the accomplishment of the administrative duties of the director and to protect the owners of the bonds the tax shall be abolished on the first day of the calendar month subsequent to the expiration of thirty (30) days from the date there is filed with the director a written statement signed by the chief executive officer of the municipality or county levying the tax and by the trustee for the bondholders, if a trustee is serving in such capacity, identifying the tax and the bonds, wherein either (a) the trustee certifies that the trustee has or will have sufficient funds set aside to pay the principal of and interest on the bonds when due at maturity or at redemption prior to maturity and the municipality or county levying the tax certifies that the tax is not pledged to any other bonds of such municipality or county or (b) the municipality or county levying municipality or county the tax certifies that there are no longer any bonds outstanding payable from tax collections. In the case of (b), there shall be attached to the written statement proof satisfactory to the director that there are no longer any bonds outstanding payable from tax collections. The chief executive officer of the municipality or county shall file the appropriate certificate not later than sixty (60) days after the bonds have been paid in full or funds to make payment in full have been set aside with the trustee.

(d) After one (1) year has elapsed after the effective date of the abolishment of the tax, the State Treasurer shall remit the balance in any suspense account maintained by the State Treasurer in connection therewith directly to the municipality or county levying the tax."

SECTION 2. Arkansas Code 14-164-337 is hereby amended to read as follows:

"14-164-337. Pledge of preexisting sales and use tax.

(a) In any municipality or county which has in effect the levy of a one percent (1%) local sales and use tax, the legislative body may, by ordinance pledge all or a specified portion of the existing tax to retire its bonds as provided in this subchapter.

(b)(1) No pledge of an existing local sales and use tax levy shall be effective unless the issuance of bonds has been approved by the voters of the municipality or county issuing the bonds at an election as provided in 14-164-328.

(2)(A) The ballot form in an election to issue bonds secured by the pledge of an existing local sales and use tax levy shall be limited to the question or questions concerning the proposed bonds and shall not resubmit the levy of the tax.

(B) The ballot shall contain a statement that the existing sales and use tax shall be pledged to the retirement of the bonds.

(c)(1) In any county which has in effect a county local sales and use tax, a municipality therein may by ordinance pledge all or any portion of such tax to which the municipality is entitled to receive to retire bonds of the municipality issued under this subchapter.

(2) As long as any bonds so authorized and issued are outstanding, the local sales and use tax shall continue to be levied and collected in such municipality until the bonds are retired, notwithstanding the repeal or abolishment of such countywide tax.

(d) In any county which has in effect a county local sales and use tax, a municipality therein may by ordinance pledge all or a portion of its share of the county tax to retire bonds of the county issued under this subchapter. All such amounts pledged shall be used by the county as its funds to the extent necessary to pay debt service on such bonds and, if not so necessary, shall be transferred by or on behalf of the county to the municipality.

(e) In any municipality or county in which an existing local sales and use tax is pledged to secure the payment of bonds authorized by this subchapter, that portion of the tax pledged to secure the payment of bonds shall not be repealed, abolished, or reduced so long as any of such bonds are outstanding.

(f)(1) Any moneys collected which, as indicated by a certified copy of an ordinance of the municipality or county previously filed with the director and the State Treasurer, are pledged, under the provisions of any act, to secure the retirement of bonds authorized by this subchapter, shall be transmitted by the director to the State Treasurer.

(2) The State Treasurer shall not deposit any such moneys into the State Treasury or into General Revenues, but shall hold such moneys apart, in trust, and shall deposit such moneys as cash funds into the Local Sales and Use Tax Trust Fund established by this subchapter.

(3) The State Treasurer shall transmit monthly to the treasurer of the municipality or county, as the case may be, or in the alternative, to a bank or other depository designated by the municipality or county, the moneys of the municipality or county held in the Local Sales and Use Tax Trust Fund established by this subchapter, subject to the charges payable and retainage authorized by 26-74-201 - 26-74-219, 26-74-221, 26-74-315 - 26-74-317, 26-75-201 - 26-75-221, 26-75-223, 26-75-317, and 26-75-318.

(4) Upon receipt of (a) a written statement signed by the trustee for the bondholders that the trustee has or will have set aside sufficient funds to pay when due at maturity or at redemption prior to maturity the principal of and interest on the bonds to which such tax has been pledged or, (b) if no trustee is serving in such capacity, a written statement signed by the municipality or county pledging the tax and/or by the municipality or county issuing the bonds to the effect that the bonds to which the tax is pledged have been fully paid and are no longer outstanding, the State Treasurer shall make payments directly to the treasurer of the municipality or county and the pledge of the tax shall cease."

SECTION 3. The amendments made by this Act shall apply to bonds heretofore or hereafter issued under the authority of Amendment No. 62 to the Constitution of the State of Arkansas and the sales and use taxes pledged to such bonds.

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

SECTION 6. The provisions of this Act are hereby declared to be separable and if any section, paragraph, sentence, or clause of this Act shall be held unconstitutional or invalid, such holding shall not affect the validity of the remainder of the Act.

SECTION 7. It is hereby found and declared by the General Assembly that municipalities and counties of the State of Arkansas have outstanding bonds payable from local sales and use taxes that must cease to be collected when the bonds are retired; and that the provisions of this Act are immediately needed in order to provide a procedure for terminating the tax and thereby reducing the local tax burden on the taxpayers of such municipalities and counties. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 13, 1989

---