

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Snyder**

A Bill

ACT 1054 OF 1995
SENATE BILL 688

For An Act To Be Entitled

8 "AN ACT TO CREATE THE PETROLEUM STORAGE TANK TRUST FUND
9 BOND FINANCING ACT; TO PROVIDE FOR THE ISSUANCE OF BONDS;
10 TO PROVIDE FOR THE ESTABLISHMENT OF THE PETROLEUM STORAGE
11 TANK TRUST FUND BOND DEBT SERVICE FUND; TO ESTABLISH THE
12 PETROLEUM STORAGE TANK TRUST FUND REVENUE BONDS RESERVE
13 FUND; TO AMEND THE PETROLEUM STORAGE TANK TRUST FUND ACT;
14 AND FOR OTHER PURPOSES."

Subtitle

16 "THE PETROLEUM STORAGE TANK TRUST FUND
17 BOND FINANCING ACT."
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19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 SECTION 1. Arkansas Code Annotated Title 15, Chapter 5 is amended by
23 adding the following sections to read as follows:

24 "Subchapter 12.

25 15-5-1201. Title. This subchapter may be known and may be cited as the
26 Petroleum Storage Tank Trust Fund Bond Financing Act.

27 15-5-1202. Purpose. The purpose of this subchapter is to provide for
28 the benefit of the public an additional method for financing remediation costs
29 and costs of compensating tank owners or operators for third-party claims from
30 the Petroleum Storage Tank Trust Fund. This financing program is made
31 available on terms and conditions prescribed by this subchapter, and it is
32 found and determined that this subchapter is in furtherance of a public
33 purpose and that the duties imposed upon the Arkansas Development Finance
34 Authority in this subchapter are in furtherance of the conservation of the
35 environment and for the protection of the public health, welfare and safety.

36 15-5-1203. Definitions. In this subchapter:

- 1 (1) Act means the Arkansas Development Finance Authority Act.
- 2 (2) Trust Fund Act means the Petroleum Storage Tank Trust Fund Act.
- 3 (3) Authority means the Arkansas Development Finance Authority.
- 4 (4) Bonds means the Arkansas Development Finance Authority Trust Fund
5 Revenue Bonds or other obligations authorized to be issued or incurred by the
6 authority pursuant to this subchapter and the act.
- 7 (5) Debt Service Fund means the Petroleum Storage Tank Trust Fund
8 Revenue Bond Debt Service Fund and any subaccount of said fund to be
9 established on the books of the authority for the purpose of paying the
10 principal of and interest on the bonds as they come due.
- 11 (6) Director means the Director of the Department of Finance and
12 Administration.
- 13 (7) Trust Fund means the Petroleum Storage Tank Trust Fund
14 established in the state treasury pursuant to Section 8-7-905.
- 15 (8) Pledged Fees means the fees collected by the Director of the
16 Department of Finance and Administration pursuant to Section 8-7-906 of this
17 code.
- 18 (9) Reserve Fund means the Petroleum Storage Tank Trust Fund Revenue
19 Bonds Reserve Fund and any subaccount of said fund established on the books of
20 the authority pursuant to this subchapter as a reserve for the payment of the
21 principal of any interest on the bonds.
22 15-5-1204. Issuance of revenue bonds by the authority.
- 23 (a) Upon the request of the Director of the Department of Pollution
24 Control and Ecology and based upon an estimate by the Department of Finance
25 and Administration of the pledged fees to be collected, the authority may
26 issue bonds for the purpose of providing money for the trust fund, paying the
27 cost of issuing the bonds and establishing the reserve fund, if necessary, and
28 the money in the trust fund shall be used as provided in the Arkansas
29 Petroleum Storage Tank Trust Fund Act.
- 30 (b) The bonds are special obligations payable only from (i) the pledged
31 fees collected by the Director of the Department of Finance and Administration
32 pursuant to Section 8-7-906, (ii) the amounts on deposit in the debt service
33 fund and the reserve fund, if any, and (iii) the investment income on the
34 amounts in the trust fund, the debt service fund, and the reserve fund. The
35 bonds do not constitute an indebtedness of the state as prohibited by the

1 Constitution.

2 (c) Bonds issued under this subchapter shall be authorized by
3 resolution of the authority_s board of directors and shall have the form and
4 characteristics and bear the designations as are provided in the resolution
5 and permitted under the act. The resolution may include such provisions and
6 covenants as the board determines necessary. The board may approve and have
7 executed any other proceedings, agreements, trust agreements, or other
8 instruments necessary and convenient to the issuance of the bonds.

9 15-5-1205. Debt service fund - pledged fees.

10 (a) The debt service on the bonds shall be secured by a lien on and
11 pledge of the petroleum environmental assurance fee established by Ark. Code
12 Ann. § 8-7-906. The pledging of such fees is hereby authorized.

13 (b) Commencing on the first day of the month next succeeding the
14 issuance of bonds by the authority, the pledged fees are specifically declared
15 to be cash funds restricted in their use and dedicated and to be used solely
16 as provided and authorized in this subchapter, in the act and in the Trust
17 Fund Act.

18 (c) Commencing on the first day of the month next succeeding the
19 issuance of bonds by the authority, the pledged fees shall not be deposited in
20 the State Treasury and shall not be subject to legislative appropriations but
21 as received by the director or the Treasurer of the State shall be deposited
22 in a bank or banks selected by the authority and approved by the treasurer.
23 The pledged fees shall be deposited to the credit of a fund hereby established
24 on the books of the authority created and designated as the Petroleum Storage
25 Tank Trust Fund Revenue Bond Debt Service Fund.

26 (d) A Debt Service Reserve Fund is hereby established on the books of
27 the authority. The reserve fund shall be funded from the proceeds of the
28 bonds and shall be held and used to insure prompt payment of debt service on
29 the bonds in such manner and pursuant to such conditions as may be specified
30 by the authority in the resolution or trust indenture authorizing or securing
31 the bonds.

32 15-5-1206. Debt service fund - payment of debt service - tax exemption.

33 (a) (1) Payment of principal and interest on the bonds shall be paid
34 from the debt service fund when due.

35 (2) If and so long as all payments of debt service are properly

1 made, on the last day of each fiscal quarter the pledged fees remaining in the
2 debt service fund in excess of a reserve to two (2) month_s requirements of
3 debt service shall be withdrawn from the debt service fund and deposited in
4 the trust fund as special revenues.

5 (3) The interest on the bonds shall be exempt from state, county
6 and municipal income, inheritance and estate taxes.

7 15-5-1207. Debt service fund - expiration of provision. The provisions
8 of this subchapter shall expire upon payment of all principal and accrued
9 interest due on the bonds and any refunding bonds issued.

10 15-5-1208. Refunding bonds. (a) The authority may provide by
11 resolution for the issuance of refunding bonds to refund outstanding bonds
12 issued under this subchapter and accrued interest on those bonds.

13 (b) The authority may sell the refunding bonds and use the proceeds to
14 retire the outstanding bonds issued under this subchapter, exchange the
15 refunding bonds for the outstanding bonds, or refund the bonds in the manner
16 provided by any other applicable statute.

17 15-5-1209. Eligible security. The bonds are eligible to secure
18 deposits of public funds of the state and cities, counties, school districts,
19 districts, authorities, and other political subdivisions of the state.

20 15-5-1210. Subchapter cumulative of other laws. This subchapter is
21 cumulative of other laws on the subject and the Development Finance Authority
22 may use provisions of other applicable laws in the issuance of bonds and other
23 obligations, but this subchapter is wholly sufficient authority for the
24 issuance of bonds and the performance of all other acts and procedures
25 authorized by this subchapter."

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27 SECTION 2. Arkansas Code Ann. § 8-7-905(c) is amended as follows:

28 "(c) The fund shall consist of gifts, grants, donations, and such other
29 funds as may be made available by the General Assembly, including all interest
30 earned upon money deposited in the fund, fees assessed under this subchapter,
31 any moneys recovered by the department, the proceeds of bonds issued by the
32 Arkansas Development Finance Authority for the benefit of the fund, and any
33 other moneys legally designated for the fund."

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35 SECTION 3. Arkansas Code Ann. § 8-7-906 is amended as follows:

1 "§ 8-7-906. Petroleum environmental assurance fee.

2 (a) There is established a petroleum environmental assurance fee to be
3 paid, except as provided in subsection (c) of this section, on each gallon of
4 motor fuel or distillate special fuel purchased or imported into this state.

5 (b) The fee shall be paid by the first distributor or supplier
6 receiving fuel from a terminal in this state, or, if the fuel will never be
7 stored in a terminal in this state, then by the distributor or supplier who
8 first imports fuel into this state by tank truck.

9 (c) Exchanges of fuels on a gallon-for-gallon basis within a terminal
10 or fuels exported from this state are exempt from the fee.

11 (d) Proof of payment shall be provided to the owner or operator.

12 (e) The fee shall be remitted to the Director of the Department of
13 Finance and Administration at the time, in the manner, and on forms prescribed
14 by the director and may be collected and remitted at the same time and in the
15 same manner as the motor fuel tax and special motor fuels tax under §
16 26-55-101 et seq. and § 26-56-101 et seq.

17 (f) For so long as no bonds for the benefit of the fund are issued and
18 outstanding, the fees collected under this subchapter shall be deposited in
19 the fund. The applicable fund balances shall be required to be maintained in
20 perpetuity.

21 (g) (1) The maximum rate for the environmental assurance fee shall be at a
22 rate of two-tenths of one cent (0.2¢) for each gallon of fuel.

23 (2) For so long as no bonds for the benefit of the fund are
24 outstanding, the fee shall be collected at the maximum rate; provided,
25 however, that when the balance of the fund reaches fifteen million dollars
26 (\$15,000,000), the rate shall drop at the beginning of the next calendar
27 quarter to such rate as the commission determines is necessary to maintain a
28 fifteen million dollar (\$15,000,000) balance. The rate shall be increased at
29 the beginning of the next calendar quarter when the fund balance drops to
30 twelve million dollars (\$12,000,000) or less and remain at the higher amount
31 not to exceed two-tenths of one cent (0.2¢) until the fund balance reaches
32 fifteen million dollars (\$15,000,000).

33 (3) The commission shall review the fund balance at least
34 quarterly and report the rate of collection for the environmental assurance
35 fee for the upcoming quarter to the Director of the Department of Finance and

1 Administration.

2 (4) During any period when bonds for the benefit of the fund are
3 outstanding, the environmental assurance fee shall be collected at a rate of
4 two-tenths of one cent (0.2¢) for each gallon irrespective of the balance of
5 the fund.

6 (h) During any period when bonds are outstanding for the benefit of the
7 fund, the environmental assurance fee shall be deposited in the Petroleum
8 Storage Tank Trust Fund Revenue Bond Debt Service Fund as provided in the
9 Petroleum Storage Tank Trust Fund Bond Financing Act. All other fees or
10 monies collected under this subchapter shall continue to be deposited in the
11 fund.

12 (i) All fees shall be subject to collection and enforcement of
13 collection under the Arkansas Tax Procedure Act, § 26-18-101 et seq."

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

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19 SECTION 5. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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

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28 SECTION 7. EMERGENCY. It is hereby found and determined by the General
29 Assembly that there is an urgent need to provide an additional method for
30 financing the remediation costs and costs of compensating tank owners or
31 operators for third-party claims from the Petroleum Storage Tank Trust Fund.
32 Therefore, an emergency is hereby declared to exist and this act being
33 necessary for the immediate preservation of the public peace, health and
34 safety shall be in full force and effect from and after its passage and
35 approval.

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APPROVED: 4-10-95