

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 685 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S2/24/05

A Bill

SENATE BILL 430

5 By: Senators Baker, Trusty, Capps, Glover, Hendren, Higginbotham, Laverty, Steele

6 By: Representatives Anderson, Sample, Rosenbaum
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AUTHORIZE THE STATE HIGHWAY COMMISSION
11 TO ISSUE STATE OF ARKANSAS FEDERAL HIGHWAY GRANT
12 ANTICIPATION AND TAX REVENUE BONDS FOR THE
13 PURPOSES OF CONSTRUCTING AND RENOVATING ROADS AND
14 HIGHWAYS; PROVIDING FOR A STATEWIDE ELECTION ON
15 THE QUESTION OF ISSUING BONDS; DECLARING AN
16 EMERGENCY; AND FOR OTHER PURPOSES.
17

18 **Subtitle**

19 ARKANSAS INTERSTATE HIGHWAY FINANCING
20 ACT OF 2005.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add a new
26 subchapter to read as follows:

27 27-64-301. Title.

28 This subchapter may be referred to and cited as the "Arkansas
29 Interstate Highway Financing Act of 2005".
30

31 27-64-302. Legislative findings and intent.

32 The General Assembly finds that:

33 (1) There is an immediate need for highway improvements
34 throughout the State of Arkansas in order to provide for the health, safety,
35 and welfare of its citizens and to promote economic development within the



1 state;

2 (2) Through the revenues generated under the Arkansas Highway
3 Financing Act of 1999, § 27-64-201 et. seq., the State Highway Commission has
4 been successful in completing the rehabilitation of much of the state's
5 interstate highway system and that the rehabilitation has been carried out in
6 an efficient, cost-effective manner;

7 (3) Continued improvement of the interstate highway system is
8 necessary and that the best way to accomplish the improvement expeditiously
9 is through the issuance of additional federal highway grant anticipation and
10 tax revenue bonds to finance highway improvements;

11 (4) The bonds should be payable from revenues currently
12 designated by the Arkansas Highway Financing Act of 1999, § 27-64-201 et.
13 seq., including federal highway assistance funding and available proceeds
14 from distillate special fuels tax levied under § 26-56-201(e); and

15 (5) The repayment of the bonds shall also be guaranteed by the
16 full faith and credit of the state.

17
18 27-64-303. Definitions.

19 As used in this subchapter:

20 (1) "Bonds" means the State of Arkansas Federal Highway Grant
21 Anticipation and Tax Revenue Bonds, also known as "GARVEE bonds", as
22 authorized in this subchapter;

23 (2) "Commission" means the State Highway Commission;

24 (3) "Debt service" means all amounts required for the payment of
25 principal, interest on, and premium, if any, due with respect to the bonds in
26 any fiscal year, along with all associated costs, including the fees and
27 costs of paying agents and trustees, remarketing agent fees, credit
28 enhancement costs, and other amounts necessary in connection with the bonds;

29 (4) "Designated revenues" means:

30 (A) The portion designated by the commission of funds
31 received or to be received from the federal government as federal highway
32 assistance funding allocated to the state designated as federal highway
33 interstate maintenance funds; and

34 (B) Revenues derived from the distillate special fuels tax
35 levied under § 26-56-201(e) that are available for expenditure after any
36 distributions required by the Arkansas Highway Financing Act of 1999, § 27-

1 64-201 et seq.; and

2 (5) "Highway improvements" or "highway improvement projects"
3 means restoration and improvements to all of the interstate highway systems
4 within the state, including roadways, bridges or rights-of-way under the
5 jurisdiction of the commission and shall also include the acquisition,
6 construction, reconstruction, and renovation of the interstate system and
7 facilities appurtenant or pertaining to the system.

8
9 27-64-304. Authorization – Purposes.

10 (a) Subject to the one-time approval of the voters in a statewide
11 election, the State Highway Commission may issue bonds from time to time if
12 the total principal amount outstanding from the issuance of the bonds,
13 together with the total principal amount outstanding from the issuance of
14 bonds pursuant to Arkansas Highway Financing Act of 1999, § 27-64-201 et
15 seq., does not at any time exceed five hundred seventy-five million dollars
16 (\$575,000,000).

17 (b) The purpose of the bond issuance shall be:

18 (1) Accelerating interstate highway improvement projects already
19 underway or scheduled;

20 (2) Funding new interstate highway improvement projects;

21 (3) Financing the restoration, reconstruction, and renovation of
22 interstate highway improvements within the State of Arkansas; and

23 (4) Paying the costs of issuance of the bonds or other credit
24 enhancement.

25
26 27-64-305. Election.

27 (a)(1) No bonds shall be issued under this subchapter unless the
28 authority of the State Highway Commission to issue the bonds from time to
29 time is approved by a majority of the qualified electors of the state voting
30 on the question at a statewide election called by proclamation of the
31 Governor.

32 (2) The election may be in conjunction with a general election
33 or it may be a special election.

34 (b)(1) Notice of the election shall be:

35 (A) Published by the Secretary of State in a newspaper of
36 general circulation in the state at least thirty (30) days prior to the

1 election; and

2 (B) Mailed to each county board of election commissioners
3 and the sheriff of each county at least sixty (60) days prior to the
4 election.

5 (2) The notice of election shall state that the election is to
6 be held for the purpose of submitting to the people the following
7 proposition, in substantially the following form:

8 “Authorizing the State Highway Commission to issue State of Arkansas
9 Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) if the
10 total principal amount outstanding from the issuance of the bonds, together
11 with the total principal amount outstanding from the issuance of bonds
12 pursuant to Arkansas Highway Financing Act of 1999, shall not, at any time,
13 exceed five hundred seventy-five million dollars (\$575,000,000). If
14 approved, the bonds will be issued in several series of various principal
15 amounts from time to time for the purpose of paying the cost of constructing
16 and renovating improvements to interstate highways and related facilities in
17 the State of Arkansas.

18 The bonds shall be general obligations of the State of Arkansas,
19 payable from certain designated revenues and also secured by the full faith
20 and credit of the State of Arkansas, including its general revenues.

21 Pursuant to the Arkansas Highway Financing Act of 2005 (the “Bond
22 Act”), the bonds will be repaid first from: (1) revenues derived from
23 federal highway assistance funding allocated to the State of Arkansas
24 designated as federal highway interstate maintenance funds; and (2) revenues
25 derived from the excise tax levied on distillate special fuels (diesel)
26 pursuant to Arkansas Code § 26-56-201(e) that are available for expenditure
27 after any distributions required by the Arkansas Highway Financing Act of
28 1999. To the extent that designated revenues are insufficient to make timely
29 payment of debt service on the bonds, the payment shall be made from the
30 general revenues of the State of Arkansas. The bonds shall be issued
31 pursuant to the authority of and the terms set forth in the Bond Act.

32 Pursuant to the Bond Act, the highway improvements to be financed are
33 limited to the restoration and improvements to all of the interstate highway
34 systems within the state, including roadways, bridges, or rights-of-way under
35 jurisdiction of the State Highway Commission, which shall also include the
36 acquisition, construction, reconstruction, and renovation of the interstate

1 highway systems and facilities appurtenant or pertaining thereto.

2 Pursuant to the Bond Act, "designated revenues" are defined as: (1)
3 the portion designated by the commission of funds received or to be received
4 from the federal government of the United States as federal highway
5 assistance funding allocated to the state designated as federal highway
6 interstate maintenance funds; and (2) revenues derived from the distillate
7 special fuels tax levied under Arkansas Code § 26-56-201(e) that are
8 available for expenditure after any distributions required by the Arkansas
9 Highway Financing Act of 1999, § 27-64-201 et seq. The bonds are further
10 secured by the full faith and credit of the State of Arkansas, and to the
11 extent "designated revenues" are insufficient to make timely payment of debt
12 service on the bonds, the general revenues of the state shall be used to pay
13 debt service on the bonds."

14 (c) The ballot title shall be "Issuance of State of Arkansas Federal
15 Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and
16 credit of the State of Arkansas". On each ballot there shall be printed the
17 title, the proposition set forth in 27-64-305(b)(2), and the following:

18 "FOR authorizing the State Highway Commission to issue State of
19 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds provided
20 that the total principal amount outstanding from the issuance of the bonds,
21 together with the total principal amount outstanding from the issuance of
22 bonds pursuant to Arkansas Highway Financing Act of 1999, shall not, at any
23 time, exceed five hundred seventy-five million dollars (\$575,000,000), and
24 the pledge of the full faith and credit of the State of Arkansas to further
25 secure the bonds []"

26 "AGAINST authorizing the State Highway Commission to issue State of
27 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds provided
28 that the total principal amount outstanding from the issuance of the bonds,
29 together with the total principal amount outstanding from the issuance of
30 bonds pursuant to Arkansas Highway Financing Act of 1999, shall not, at any
31 time, exceed five hundred seventy-five million dollars (\$575,000,000), and
32 the pledge of the full faith and credit of the State of Arkansas to further
33 secure the bonds. []"

34 (d)(1) Each county board of election commissioners shall hold and
35 conduct the election and may take any action with respect to the appointment
36 of election officials and other matters as required by the laws of the state.

1 (2) The vote shall be canvassed and the result of the vote
2 declared in each county by the board. Within ten (10) days after the date of
3 the election, the results shall be certified by the boards to the Secretary
4 of State, who shall tabulate all returns received and certify to the Governor
5 the total vote for and against the proposition submitted pursuant to this
6 subchapter.

7 (e) The result of the election shall be proclaimed by the Governor by
8 the publication of the proclamation one (1) time in a newspaper of general
9 circulation in the State of Arkansas. The results as proclaimed shall be
10 conclusive unless a complaint is filed within thirty (30) days after the date
11 of the publication in Pulaski County Circuit Court challenging the results.

12 (f)(1) If a majority of the qualified electors voting on the
13 proposition vote in favor of the proposition, then the commission may issue
14 bonds from time to time in the manner and on the terms set forth in this
15 subchapter.

16 (2) If a majority of the qualified electors voting on the
17 proposition vote against the proposition, the commission shall have no
18 authority to issue bonds.

19 (g) Subsequent elections may be called by the Governor if the
20 proposition fails, but each subsequent election may be held no earlier than
21 six (6) months after the date of the preceding election.

22
23 27-64-306. Procedure for issuing bonds.

24 (a) Prior to the issuance of any series of bonds, the State Highway
25 Commission shall adopt a resolution authorizing the issuance of the series of
26 bonds.

27 (b) Each resolution shall contain those terms, covenants, and
28 conditions as are deemed desirable and consistent with this subchapter,
29 including, without limitation, those pertaining to the establishment and
30 maintenance of funds and accounts, the deposit and investment of the Federal
31 Highway Assistance payments and bond proceeds, and the rights and obligations
32 of the state, its officers and officials, the commission, and the registered
33 owners of the bonds.

34 (c) The resolutions of the commission may provide for the execution
35 and delivery by the commission of a trust indenture or trust indentures with
36 one (1) or more banks or trust companies located within or without the state,

1 containing any of the terms, covenants, and conditions required under
2 subsection (b) of this section, and any other terms and conditions deemed
3 necessary by the commission. The trust indenture or trust indentures shall
4 be binding upon the commission and the state and their respective officers
5 and officials.

6
7 27-64-307. Terms of bonds.

8 The bonds shall be subject to the following terms and conditions:

9 (1) The bonds shall be issued in series in amounts sufficient to
10 finance all or part of the costs of construction and maintenance of highway
11 improvements. The respective series of bonds shall be designated by the year
12 in which the bonds are issued. If more than one (1) series of bonds is to be
13 issued in a particular year, the series shall be designated alphabetically;

14 (2) The bonds of each series shall have such date or dates as
15 the State Highway Commission shall determine. The bonds shall mature or be
16 subject to mandatory sinking fund redemption over a period ending not later
17 than twelve (12) years after the date of issue of each series;

18 (3) The bonds of each series shall bear interest at the rate or
19 rates determined by the commission at the sale of the bonds. The bonds may
20 bear interest at either a fixed or a variable rate or may be convertible from
21 one (1) interest rate mode to another. The interest shall be payable at the
22 times as the commission shall determine;

23 (4) The bonds shall be issued in the form of bonds registered as
24 to both principal and interest without coupons;

25 (5) The commission shall determine:

26 (A) The denominations of the bonds;

27 (B) Whether the bonds may be made exchangeable for bonds
28 of another form or denomination bearing the same rate of interest;

29 (C) When the bonds may be made payable and the places
30 within or without the state where the bonds may be payable;

31 (D) Whether the bonds may be made subject to redemption
32 prior to maturity and the manner or and prices for redemption; and

33 (E) Any other terms and conditions; and

34 (6) Each bond shall be executed with the facsimile signatures of
35 the chair and secretary of the commission and the seal of the commission
36 shall be affixed or imprinted on the bond. Delivery of executed bonds shall

1 be valid, notwithstanding any change in the persons holding the offices that
2 occur after the bonds have been executed.

3
4 27-64-308. Sale of bonds.

5 (a) The bonds may be sold in any manner, either at private or public
6 sale, and upon terms as the State Highway Commission shall determine to be
7 reasonable and expedient for effecting the purposes of this subchapter. The
8 bonds may be sold at a price acceptable to the commission, which may include
9 a discount or a premium.

10 (b) If the bonds are to be sold at public sale, the commission shall
11 give notice of the offering of the bonds in a manner reasonably designed to
12 notify participants in the public finance industry that the offering is being
13 made. The commission shall set the terms and conditions of bidding,
14 including the basis on which the winning bid will be selected.

15 (c) The commission may structure the sale of bonds utilizing financing
16 techniques that are recommended by the commission's professional advisors in
17 order to take advantage of market conditions and obtain the most favorable
18 interest rates consistent with the purposes of this subchapter.

19 (d) The commission may enter into any ancillary agreements in
20 connection with the sale of the bonds as it deems necessary and advisable,
21 including, without limitation, bond purchase agreements, remarketing
22 agreements, and letter of credit and reimbursement agreements.

23
24 27-64-309. Employment of professionals.

25 The State Highway Commission may retain any professionals it deems
26 necessary to accomplish the issuance and sale of the bonds, including,
27 without limitation, legal counsel, financial advisors, underwriters,
28 trustees, paying agents, and remarketing agents.

29
30 27-64-310. Sources of repayment.

31 (a) The bonds shall be general obligations of the State of Arkansas
32 secured and payable from the designated revenues and the general revenues of
33 the state.

34 (b) The bonds shall be payable first from the following designated
35 revenues:

36 (1) The portion designated by the State Highway Commission of

1 funds received or to be received from the federal government as federal
2 highway assistance funding allocated to the state and designated as federal
3 highway interstate maintenance funds; and

4 (2) Revenues derived from the distillate special fuels tax
5 levied under § 26-56-201(e) that are available for expenditure after any
6 distributions required by the Arkansas Highway Financing Act of 1999, § 27-
7 64-201 et seq.

8 (c) If the amount of designated revenues is insufficient to make
9 timely payment of debt service on the bonds, the payment shall be made from
10 the general revenues of the State of Arkansas.

11 (d) In order to secure the payment of debt service, any trust
12 instrument, resolution, or other document setting forth the security for the
13 bondholders may provide for the direct payment of the federal highway
14 assistance funds that are designated revenues directly into a trust fund or
15 to a paying agent for the payment of debt service on the bonds. It shall not
16 be necessary for the funds to be deposited into the State Treasury.

17
18 27-64-311. Investment of proceeds.

19 (a) Any designated revenues and any proceeds of bonds held pending
20 disbursement on highway improvements shall be invested by the State Highway
21 Commission to the full extent practicable pending disbursement for the
22 purposes intended.

23 (b) Notwithstanding any other provision of law, the investments shall
24 be in accordance with the terms of the resolution or trust indenture
25 authorizing or securing the series of bonds to which the designated revenues
26 or bond proceeds appertain to the extent the terms of the resolution or trust
27 indenture are applicable.

28
29 27-64-312. Refunding bonds.

30 (a) The State Highway Commission may issue bonds for the purpose of
31 refunding bonds previously issued pursuant to this subchapter if the total
32 amount of bonds outstanding after the refunding is completed does not exceed
33 the total amount authorized by this subchapter.

34 (b) The refunding bonds shall be special obligations of the State of
35 Arkansas and shall be secured and sold in accordance with the provisions of
36 this subchapter.

1
2 27-64-313. Tax exemption.

3 (a) All bonds issued under this subchapter and interest on the bonds
4 shall be exempt from all taxes of the State of Arkansas, including income,
5 inheritance, and property taxes.

6 (b) The bonds shall be eligible to secure deposits of all public funds
7 and shall be legal for investment of municipal, county, bank, fiduciary,
8 insurance company, and trust funds.

9
10 27-64-314. Powers of the State Highway Commission.

11 (a) All powers granted to the State Highway Commission under this
12 subchapter are in addition to the powers of the commission under Amendment 42
13 to the Arkansas Constitution and the laws of the State of Arkansas.

14 (b) No member of the commission shall be liable personally for any
15 reason arising from the issuance of bonds pursuant to this subchapter unless
16 the member acts with corrupt intent.

17
18 SECTION 2. Arkansas Code § 26-56-201(f), pertaining to the
19 distribution of additional distillate fuel excise tax, is amended to read as
20 follows:

21 ~~(f)(1)~~ The additional taxes collected pursuant to this section shall
22 be considered special revenues and shall be distributed as set forth in the
23 Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any
24 requirements for the repayment of bonds issued under the Arkansas Highway
25 Financing Act of 1999, § 27-64-201 et seq., and the Arkansas Interstate
26 Highway Financing Act of 2005, § 27-64-301 et seq.

27 ~~(2)~~ ~~However, if the bond issue provided in the Arkansas Highway~~
28 ~~Financing Act of 1999 is approved by the voters, the distillate special fuel~~
29 ~~taxes collected pursuant to § 26-56-201(e)(1) shall be distributed as~~
30 ~~provided in the Arkansas Highway Financing Act of 1999.~~

31
32 SECTION 3. Arkansas Code § 26-55-1006(d), pertaining to the
33 distribution of additional motor fuel tax, is amended to read as follows:

34 ~~(d)(1)~~ The additional taxes collected pursuant to this section shall
35 be considered special revenues and shall be distributed as set forth in the
36 Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

1