Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
88th General Assembly
Regular Session, 2011

A Bill

For An Act To Be Entitled

AN ACT TO ESTABLISH AN ADDITIONAL TAX ON DISTILLATE SPECIAL FUEL FOR THE IMPROVEMENT OF ARKANSAS STATE ROADS AND HIGHWAYS; TO AUTHORIZE THE ARKANSAS STATE HIGHWAY COMMISSION TO ISSUE STATE OF ARKANSAS FEDERAL HIGHWAY GRANT ANTICIPATION AND TAX REVENUE BONDS FOR THE PURPOSES OF CONSTRUCTING AND RENOVATING ROADS AND HIGHWAYS FOR THE CITIZENS OF THE STATE OF ARKANSAS; AUTHORIZING THAT THE REPAYMENT OF BONDS BE GUARANTEED BY THE FULL FAITH AND CREDIT OF THE STATE; PRESCRIBING THE TERMS AND CONDITIONS OF THE ISSUANCE OF BONDS; PROVIDING FOR A STATEWIDE ELECTION ON THE QUESTION OF LEVYING THE ADDITIONAL TAX ON DISTILLATE SPECIAL FUEL AND ISSUING BONDS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS HIGHWAY FINANCING ACT OF 2011.

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

SECTION 1. Arkansas Code 26-56-201(f), concerning distillate special fuel, is amended to read as follows:

(f) The additional taxes collected pursuant to under this section shall be considered are special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., subject to any requirements for the repayment of bonds issued under the
Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., and the Arkansas
Interstate Highway Financing Act of 2007, § 27-64-401 et seq., and the

SECTION 2. Arkansas Code Title 26, Chapter 56 is amended to add a new
subchapter to read as follows:

Subchapter 8 — Additional Tax on Distillate Special Fuel.

26-56-801. Definition.
"Distillate special fuel" as used in this subchapter, means distillate
special fuel as defined in § 26-56-102(6), except that distillate special
fuel for purposes of the tax levied by this subchapter shall exclude
distillate special fuel not intended for highway use, as defined by federal
regulations on January 1, 2011, and for agricultural purposes.

26-56-802. Additional tax on distillate special fuel.
(a)(1) In addition to all other taxes levied upon distillate special
fuel, there is levied an additional tax on distillate special fuel of five
cents (5¢) for each gallon of distillate special fuel sold or used in this
state, or purchased for sale or use in this state.

(2) The additional tax on distillate special fuel applies only
to distillate special fuel intended for highway use or to fuel a motor
vehicle intended for highway use.

(b) The additional distillate special fuel tax under this section is
subject to the exemptions under this chapter.

(c)(1) The levy of the additional tax on distillate special fuel by
subsection (a)(1) of this section is conditioned upon the approval by a
majority of the qualified electors of the state voting on the measure
providing for the levy of the additional tax on distillate special fuel and
the issuance of bonds in a statewide election held under the provisions of
the Arkansas Highway Financing Act of 2011.

(2) If the levy of the additional tax on distillate special fuel
and the issuance of the bonds is approved, the:

(A) Effective date of the additional tax on distillate
special fuel by levied subsection (a)(1) of this section shall be the first
day of the second month following the month in which the Secretary of State
certifies the vote of the voters of the state approving the levy of the additional tax on distillate special fuel and the issuance of bonds; and

(B) Additional tax on distillate special fuel levied by subdivision (a)(1) of this section shall terminate and shall no longer be collected upon certification by the Chairman of the Arkansas State Highway Commission that the bonds issued under the Arkansas Highway Finance Act of 2011 have been paid in full and all obligations of the commission with respect to such bonds have been performed in full.

(3) If the levy of the additional tax on distillate special fuel and the issuance of the bonds are not approved, the levy of the additional tax on distillate special fuel by subdivision (a)(1) shall terminate and the additional tax shall not be collected.

26-56-803. Administration.

The tax on distillate special fuel levied by this subchapter shall be administered in accordance with the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

26-56-804. Disposition.

The tax imposed by this subchapter is levied to provide revenue to be used by the state to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 2011.

SECTION 3. Arkansas Code Title 27, Chapter 64 is amended to add a new subchapter to read as follows:

27-64-501. Title.

This subchapter may be referred to and cited as the “Arkansas Highway Financing Act of 2011”.


The General Assembly of the State of Arkansas finds that:

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

(2) Through revenues generated pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the State Highway Commission has been successful in completing the rehabilitation of much of the state’s Interstate Highway System and that the rehabilitation has been carried out in an efficient, cost-effective manner;

(3) Continued improvement of the Interstate Highway System and other routes on the National Highway System is necessary and the best way to accomplish the improvements expeditiously is through the issuance of additional federal highway grant anticipation and tax revenue bonds to finance highway improvements; and


(5) The repayment of the bonds should be guaranteed by the full faith and credit of the state.

As used in this subchapter:

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

(2) “Commission” means the State Highway Commission;

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

(4) “Designated revenues” means:

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

(B) Revenues derived from the distillate special fuel tax levied under:

(i) § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Financing Act of 2007, § 27-64-401 et seq.; and

(ii) § 26-56-802; and

(5) “Highway improvements” or “highway improvement projects” means restoration and improvements to the Interstate Highway System and other routes within the National Highway System within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission and includes the acquisition, construction, reconstruction, renovation of the Interstate System and other routes within the National Highway System within the state and facilities appurtenant or pertaining to the Interstate Highway System and other routes within the National Highway System.


(a)(1) Subject to the one-time approval of the voters in a statewide election, the State Highway Commission may issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Financing Act of 2007, § 27-64-401 et seq., does not at any time exceed one billion one hundred million dollars ($1,100,000,000).

(2) The bonds will be issued in one (1) or more series of various principal amounts with the last series being issued no later than December 31, 2017.

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

(1) Accelerate highway improvement projects already underway or scheduled;

(2) Fund new highway improvement projects;
(3) Finance the restoration, reconstruction, and renovation of highway improvements within the State of Arkansas; and

(4) Pay the costs of issuance of the bonds or other credit enhancement.

27-64-505. Election.
(a)(1) State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall not be issued under this subchapter unless the levy of the additional tax on distillate special fuel under § 26-56-802 and the authority of the State Highway Commission to issue the bonds from time to time are approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor.

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

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

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

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

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

"Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Financing Act of 2007, § 27-64-401 et seq. shall not, at any time, exceed one billion one hundred million dollars ($1,100,000,000). If approved, the bonds will be issued in several series of various principal amounts from time to time, with the last series being issued no later than
December 31, 2017, for the purpose of paying the cost of constructing and renovating improvements to the Interstate Highway System and related facilities in the State of Arkansas and improvements to other routes on the National Highway System and related facilities in the State of Arkansas."

"The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues including particularly and without limitation a new tax described below, and also secured by the full faith and credit of the State of Arkansas, including its general revenues."

"Under the Arkansas Highway Financing Act of 2011 (the "Bond Act"), the bonds will be repaid first from: (1) revenues derived from federal highway assistance funding allocated to the State of Arkansas; (2) revenues derived from the excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway Financing Act of 2005, and the Arkansas Interstate Financing Act of 2007; and (3) revenues derived from a new excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-802 at the rate of five cents per gallon if the measure is approved. To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in the Bond Act."

"Under the Bond Act, the highway improvements to be financed are limited to the restoration and improvements to the Interstate Highway System and of other routes on the National Highway System within the state, including roadways, bridges, or rights-of-way under jurisdiction of the State Highway Commission, which shall also include the acquisition, construction, reconstruction, and renovation of the Interstate Highway System of other routes on the National Highway System and facilities appurtenant or pertaining thereto."

"Under Arkansas Code § 26-56-802, there is levied, subject to approval of this measure, a new excise tax levied on distillate special fuel (diesel) at
the rate of five cents per gallon. This tax shall not be levied unless this
measure is approved by the voters."

"Under the Bond Act, “designated revenues” are defined as: (1) the portion
designated by the commission of funds received or to be received from the
federal government of the United States as federal highway assistance funding
allocated to the state; (2) revenues derived from the excise tax levied on
distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-201(e)
that are available for expenditure after any distributions required by the
Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway
Financing Act of 2005, and the Arkansas Interstate Financing Act of 2007; and
(3) revenues derived from the excise tax levied on distillate special fuel
(diesel) pursuant to Arkansas Code § 26-56-802, which is a new five cent per
gallon tax to be levied upon the approval of this measure. The bonds are
further secured by the full faith and credit of the State of Arkansas, and to
the extent “designated revenues” are insufficient to make timely payment of
debt service on the bonds, the general revenues of the state shall be used to
pay debt service on the bonds."

(c) The ballot title shall be “Issuance of State of Arkansas Federal
Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and
credit of the State of Arkansas, and the levy of an additional five cent per
gallon tax on distillate special fuel (diesel)”. On each ballot there shall
be printed the title, the proposition set forth in subdivision (b)(2) of this
section, and the following:

"FOR authorizing the State Highway Commission to issue State of Arkansas
Federal Highway Grant Anticipation and Tax Revenue Bonds provided that the
total principal amount outstanding from the issuance of the bonds, together
with the total principal amount outstanding from the issuance of bonds
pursuant to Arkansas Highway Financing Act of 1999, the Arkansas Interstate
Highway Financing Act of 2005, and the Arkansas Interstate Financing Act of
2007, shall not, at any time, exceed one billion one hundred million dollars
($1,100,000,000); such bonds to be issued in one or more series of various
principal amounts with the last series being issued no later than December
31, 2017, and the pledge of the full faith and credit of the State of
Arkansas to further secure the bonds, and the levy of an additional 5¢ per
gallon excise tax on distillate special fuel (diesel) to pay, as described
above, along with other "designated revenues," as defined in the Arkansas
Highway Financing Act of 2011, debt service on bonds . . . . . . . [ ]”

“AGAINST authorizing the State Highway Commission to issue State of Arkansas
Federal Highway Grant Anticipation and Tax Revenue Bonds provided that the
total principal amount outstanding from the issuance of the bonds, together
with the total principal amount outstanding from the issuance of bonds
pursuant to Arkansas Highway Financing Act of 1999, the Arkansas Interstate
Highway Financing Act of 2005, and the Arkansas Interstate Financing Act of
2007, shall not, at any time, exceed one billion one hundred million dollars
($1,100,000,000); such bonds to be issued in one or more series of various
principal amounts with the last series being issued no later than December
31, 2017, and the pledge of the full faith and credit of the State of
Arkansas to further secure the bonds, and the levy of an additional 5¢ per
gallon excise tax on distillate special fuel (diesel) to pay, as described
above, along with other "designated revenues," as defined in the Arkansas
Highway Financing Act of 2011, debt service on bonds . . . . . . . . . . . . .
[ ]“

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

(2)(A) The vote shall be canvassed and the result of the vote
declared in each county by the board.

(B) Within ten (10) days after the date of the election,
the results shall be certified by the boards to the Secretary of State, who
shall tabulate all returns received and certify to the Governor the total
vote for and against the proposition submitted pursuant to this subchapter.

(e)(1) The result of the election shall be proclaimed by the Governor
by the publication of the proclamation one (1) time in a newspaper of general
circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a
complaint is filed within thirty (30) days after the date of the publication
in Pulaski County Circuit Court challenging the results.
(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, then the commission may issue bonds from time to time in the manner and on the terms set forth in this subchapter.

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


(a) Prior to the issuance of any series of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, the State Highway Commission shall adopt a resolution authorizing the issuance of the series of bonds.

(b) Each resolution shall contain those terms, covenants, and conditions as are desirable and consistent with this subchapter, including without limitation those pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of the federal highway assistance payments and bond proceeds, and the rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(c)(1) The resolutions of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions required under subsection (b) of this section, and any other terms and conditions deemed necessary by the commission.

(2) The trust indenture or trust indentures are binding upon the commission and the state and their respective officers and officials.

27-64-507. Terms of bonds.

The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be subject to the following terms and conditions:

(1)(A) The bonds shall be issued in series in amounts sufficient to finance all or part of the costs of construction and maintenance of highway improvements.
(B) The respective series of bonds shall be designated by the year in which the bonds are issued.

(C) If more than one (1) series of bonds is to be issued in a particular year, the series shall be designated alphabetically;

(2)(A) The bonds of each series shall have the date or dates as the State Highway Commission shall determine.

(B) The bonds shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series;

(C) Refunding bonds issued under § 26-64-512 shall mature or be subject to mandatory sinking fund redemption over a period not ending later than twelve (12) years after the date of issue of the original bonds of each series;

(3)(A) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds.

(B) The bonds may bear interest at either a fixed or a variable rate or may be convertible from one (1) interest rate mode to another.

(C) The interest shall be payable at the times as the commission shall determine;

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

(5) The commission shall determine:

(A) The denominations of the bonds;

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

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

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

(E) Any other terms and conditions; and

(6)(A) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission, and the seal of the commission shall be affixed or imprinted on the bond.

(B) Delivery of executed bonds shall be valid.
notwithstanding any change in the persons holding the offices that occurs
after the bonds have been executed.


(a)(1) The State of Arkansas Federal Highway Grant Anticipation and
Tax Revenue Bonds may be sold in any manner, either at private or public
sale, and upon terms as the State Highway Commission shall determine to be
reasonable and expedient for effecting the purposes of this subchapter.

(2)(A) The bonds may be sold at a price acceptable to the commission.

(B) The price may include a discount or premium.

(b)(1) If the bonds are to be sold at public sale, the commission
shall give notice of the offering of the bonds in a manner reasonably
designed to notify participants in the public finance industry that the
offering is being made.

(2) The commission shall set the terms and conditions of
bidding, including the basis on which the winning bid will be selected.

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

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

27-64-509. Employment of professionals.

The State Highway Commission may retain any professionals necessary to
accomplish the issuance and sale of the State of Arkansas Federal Highway
Grant Anticipation and Tax Revenue Bonds, including without limitation legal
counsel, financial advisors, underwriters, trustees, paying agents, and
remarketing agents.

27-64-510. Sources of repayment.

(a) The State of Arkansas Federal Highway Grant Anticipation and Tax
Revenue Bonds shall be general obligations of the State of Arkansas secured
and payable from the designated revenues and the general revenues of the state.

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

(1) The portion designated by the State Highway Commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state; and

(2) Revenues derived from the distillate special fuel tax levied under:

(A) § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, the Arkansas Interstate Financing Act of 2005, and the Arkansas Interstate Financing Act of 2007; and

(B) § 26-56-802.

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

(d)(1) In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds.

(2) It is not necessary for the funds to be deposited into the State Treasury.

(e) The additional distillate special fuel tax levied under § 26-56-802 shall terminate as provided under § 26-56-802(c)(3).

27-64-511. Investment of proceeds.

(a) Designated revenues and proceeds of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds held pending disbursement on highway improvements shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended.

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

27-64-512. Refunding bonds.
(a) The State Highway Commission may issue bonds for the purpose of refunding the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds previously issued pursuant to this subchapter if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.
(b) The refunding bonds shall be general obligations of the State of Arkansas and shall be secured and sold in accordance with the provisions of this subchapter.

27-64-513. Tax exemption.
(a) All State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds issued under this subchapter and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.
(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

(a) All powers granted to the State Highway Commission under this subchapter are in addition to the powers of the commission under Arkansas Constitution, Amendment 42 and the laws of the State of Arkansas.
(b) No member of the commission shall be liable personally for any reason arising from the issuance of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds pursuant to this subchapter unless the member acts with corrupt intent.

/s/Moore