

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.

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

A Bill

SENATE BILL 1137

4
5 By: Senator Baker
6 By: Representative Maloch

For An Act To Be Entitled

10 AN ACT TO AUTHORIZE THE ARKANSAS DEVELOPMENT
11 FINANCE AUTHORITY TO ISSUE STATE OF ARKANSAS
12 HIGHER EDUCATION GENERAL OBLIGATION BONDS FOR
13 TECHNOLOGY AND FACILITY IMPROVEMENTS FOR STATE
14 INSTITUTIONS OF HIGHER EDUCATION; TO REFUND
15 CERTAIN OUTSTANDING BONDS; TO PROVIDE FOR A
16 STATEWIDE ELECTION ON THE ISSUANCE OF BONDS; AND
17 FOR OTHER PURPOSES.

Subtitle

18
19 ARKANSAS HIGHER EDUCATION TECHNOLOGY AND
20 FACILITY IMPROVEMENT ACT OF 2005.
21
22
23

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

25
26 SECTION 1. Arkansas Code, Title 6, Chapter 62 is amended to add a new
27 subchapter as follows:

28 6-62-1101. Title.

29 This subchapter may be referred to and cited as the "Arkansas Higher
30 Education Technology and Facility Improvement Act of 2005".

31
32 6-62-1102. Legislative findings.

33 The General Assembly finds that:

34 (1) Expanded availability of higher educational opportunities
35 for families in this state with school-age children has become increasingly
36 necessary in order to preserve and protect the health, welfare, and



1 prosperity of this state and its citizens;

2 (2) The increasing competitiveness and technological
 3 sophistication of today's products, services, and markets and the growing
 4 importance of our dynamic economy require a highly educated and well-trained
 5 work force in order for this state to preserve, protect, and promote
 6 employment opportunities;

7 (3) A strong system of higher education has been and will
 8 continue to be not only a wellspring for the enhancement of this state's
 9 cultural well-being, but also a substantial contributing factor to the growth
 10 of this state's economy by stimulating the development of new products and
 11 services;

12 (4) There is a growing need for this state to undertake projects
 13 to upgrade and expand this state's higher education technology equipment and
 14 to improve this state's higher education and physical plant; and

15 (5) The public policies and responsibilities of this state as
 16 described in this section cannot be fully obtained without the use of public
 17 financing and that the public financing can only be provided by the adoption
 18 of this subchapter by the General Assembly and its approval by the electors
 19 of the State of Arkansas.

20
 21 6-62-1103. Definitions.

22 As used in this subchapter:

23 (1) "Athletic facilities" means facilities used primarily for
 24 intercollegiate or intramural sports;

25 (2) "Bonds" means the State of Arkansas Higher Education General
 26 Obligation Bonds as authorized in this subchapter;

27 (3) "Debt service" means all amounts required for the payment of
 28 principal, interest, and premium, if any, due with respect to the bonds in
 29 any fiscal year, along with all associated costs, including the fees and
 30 costs of paying agents and trustees, remarketing agent fees, credit
 31 enhancement costs, arbitrage rebate costs, administrative costs, and other
 32 amounts necessary in connection with the repayment of and security for the
 33 bonds;

34 (4) "Develop" or "development" means the construction, repair,
 35 renovation, design, expansion, improvement, acquisition, installation, or
 36 equipping of any lands, buildings, improvements, machinery, equipment, or

1 other properties of whatever nature, real, personal, or mixed;

2 (5) "Facility improvement projects" means any lands, buildings,
 3 improvements, machinery, equipment, or other property, real, personal, or
 4 mixed, or any combination of property developed in pursuance of all or any of
 5 the purposes of this subchapter as promulgated by the rules established by
 6 the Arkansas Higher Education Coordinating Board which are not technology
 7 projects as defined in this subchapter;

8 (6) "General revenues" means the general revenues defined in
 9 § 19-6-201;

10 (7) "Project costs" means all or any part of the costs of
 11 developing any projects under this subchapter, costs of refunding bonds
 12 issued under this subchapter or under the Arkansas College Savings Bond Act
 13 of 1989, § 6-62-701 et seq., costs incidental or appropriate to the projects
 14 or bonds, and costs incidental or appropriate to the financing of the
 15 projects or bonds, including, without limitation, costs of issuance of the
 16 bonds, capitalized interest, liquidity facility fees, appropriate reserves,
 17 credit enhancement, bond insurance or surety bond premiums, the
 18 administrative fees of the issuer, and fees and costs for engineering, legal,
 19 and other professional, administrative, and consultant services;

20 (8) "State institution of higher education" means any public
 21 university, college, technical college, or community college established or
 22 authorized by the General Assembly; and

23 (9) "Technology projects" means any lands, buildings,
 24 improvements, machinery, equipment, or other property, real, personal,
 25 tangible or intangible, or mixed, or any combination thereof, developed in
 26 pursuance of all or any of the purposes of this subchapter but specifically
 27 for the purpose of upgrading or expanding this state's higher education
 28 technology equipment and facilities as promulgated by the rules established
 29 by the Arkansas Higher Education Coordinating Board.

30
 31 6-62-1104. Power and duties.

32 (a) Before any bonds may be issued during a fiscal biennium, except
 33 for refunding purposes, the Arkansas Higher Education Coordinating Board
 34 shall submit to the Governor a written plan for technology and facility
 35 improvement projects to be funded with the proceeds derived from the sale of
 36 the bonds, the need for the projects, the estimated benefits of the projects,

1 and the anticipated debt service requirements for the bonds.

2 (b)(1) Upon receipt of the plan, the Governor shall confer with the
3 Chief Fiscal Officer of the State concerning the amount and availability of
4 unrestricted funds in the General Improvement Fund that would be used to meet
5 the debt service requirements.

6 (2) The Chief Fiscal Officer of the State shall determine
7 whether the annual amount of the net general revenues required to be set
8 aside from general revenues for payment of the remaining debt service
9 requirements in connection with the bonds to be issued under this subchapter
10 during either year of the fiscal biennium in which the bonds are to be
11 issued, would work undue hardship upon any agency or program supported from
12 general revenues under the provisions of the Revenue Stabilization Law, § 19-
13 5-101 et seq.

14 (c) After conferring with the Chief Fiscal Officer of the State
15 pursuant to subsection (b) of this section, if the Governor determines that
16 issuing bonds under this subchapter is in the public interest, the Governor
17 shall authorize by proclamation the Arkansas Higher Education Coordinating
18 Board and the Arkansas Development Finance Authority to proceed with the
19 issuance of the bonds under this subchapter.

20 (d) The Arkansas Development Finance Authority and the Arkansas Higher
21 Education Coordinating Board, in addition to and not in replacement or
22 limitation of powers conferred under other laws, shall each have the power
23 under this subchapter to:

24 (1) Make available bond proceeds and investment earnings on the
25 bonds proceeds to state institutions of higher education for payment of
26 project costs in accordance with this subchapter;

27 (2) Enter into any and all contracts necessary or convenient for
28 the exercise of the powers or implementation of the purposes set forth in
29 this subchapter;

30 (3) Require audits or other periodic reports of any or all
31 accounts related to construction, operation, or maintenance of any projects
32 funded by this subchapter;

33 (4) Take reasonable actions to ensure that debt service
34 requirements are met; and

35 (5) Take other action as may be appropriate to accomplish the
36 purposes of this subchapter.

1 (e) The Arkansas Development Finance Authority and the Arkansas Higher
2 Education Coordinating Board are each authorized to promulgate rules with
3 respect to their powers and duties pursuant to this subchapter.

4 (f) No member of the Arkansas Development Finance Authority or the
5 Arkansas Higher Education Coordinating Board shall be liable personally for
6 any reason arising from the issuance of bonds pursuant to this subchapter
7 unless the person shall have acted with corrupt intent.

8
9 6-62-1105. Authorization – Purposes.

10 The Arkansas Development Finance Authority, on behalf of the State of
11 Arkansas, is authorized, subject to the approval of the voters in a statewide
12 election, to issue bonds to be known as "State of Arkansas Higher Education
13 General Obligation Bonds", in a total principal amount not to exceed two
14 hundred fifty million dollars (\$250,000,000) for the purpose of financing the
15 development of technology projects and facility improvement projects for
16 state institutions of higher education and for the purpose of refunding bonds
17 issued under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et
18 seq.

19
20 6-62-1106. Bonds – Debt service limitation.

21 The total principal amount of bonds outstanding under this subchapter
22 and under the Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.
23 shall not have combined scheduled debt service payments in excess of twenty-
24 four million dollars (\$24,000,000) in any one (1) fiscal year.

25
26 6-62-1107. Projects to be financed.

27 The proceeds of bonds issued under this subchapter for nonrefunding
28 purposes shall be used to finance the development of technology projects and
29 facility improvement projects. However, none of the projects shall be
30 primarily for athletic facilities.

31
32 6-62-1108. Election.

33 (a)(1) No bonds shall be issued under this subchapter, except as
34 otherwise provided in this subchapter, unless the issuance of bonds and the
35 pledge of the full faith and credit of the State of Arkansas has been
36 approved by a majority of the qualified electors of this state voting on the

1 question at a statewide election called by proclamation of the Governor.

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

4 (3) Notice of the election shall be:

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

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

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

13 “Authorizing the Arkansas Development Finance Authority to issue State
14 of Arkansas Higher Education General Obligation Bonds (the “bonds”) in a
15 total principal amount not to exceed two hundred fifty million dollars
16 (\$250,000,000) in one (1) or more series from time to time for the purpose of
17 financing the cost of developing technology and facility improvement projects
18 for state institutions of higher education and financing the cost of
19 refunding bonds issued under the Arkansas College Savings Bond Act of 1989.
20 However, that the outstanding principal amount of bonds issued under the
21 Arkansas Higher Education Technology and Facility Improvement Act of 2005 and
22 the Arkansas College Savings Bond Act of 1989 shall not have scheduled debt
23 service payments on a combined basis in excess of twenty-four million dollars
24 (\$24,000,000) in any one (1) fiscal year.

25 The bonds shall be general obligations of the State of Arkansas,
26 payable from general revenues of the state and also secured by the full faith
27 and credit of the State of Arkansas, including its general revenues. The
28 bonds shall be issued pursuant to the authority of and the terms set forth in
29 the Arkansas Higher Education Technology and Facility Improvement Act of
30 2005.”

31 (c) The ballot title shall be “Issuance of State of Arkansas Higher
32 Education General Obligation Bonds and Pledge of Full Faith and Credit of the
33 State of Arkansas”. On each ballot there shall be printed the title, the
34 proposition set forth in § 6-62-1108(b), and the following:

35 “FOR issuance of State of Arkansas Higher Education General Obligation
36 Bonds and Pledge the Full Faith and Credit of the State of Arkansas.”

1 “AGAINST issuance of State of Arkansas Higher Education General
2 Obligation Bonds and Pledge the Full Faith and Credit of the State of
3 Arkansas.”

4 (d)(1) The county boards of election commissioners in each of the
5 counties of this state shall hold and conduct the election.

6 (2) Each county board of election commissioners shall take
7 necessary action with respect to the appointment of election officials and
8 other matters as required by law.

9 (3) The vote shall be canvassed and the result of the vote
10 declared in each county by the board.

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

15 (e) The results of the election shall be proclaimed by the Governor by
16 the publication of the proclamation one (1) time in a newspaper of general
17 circulation in this state. The results as proclaimed shall be conclusive
18 unless a complaint is filed within thirty (30) days after the date of the
19 publication in the Pulaski County Circuit Court challenging the results.

20 (f)(1) If a majority of the qualified electors voting on the
21 proposition vote in favor of the issuance of the bonds, then the Arkansas
22 Development Finance Authority and the Arkansas Higher Education Coordinating
23 Board shall proceed with the issuance of bonds in the manner and on the terms
24 set forth in this subchapter.

25 (2) If a majority of the qualified electors voting on the
26 proposition vote against the issuance of the bonds, none of the bonds
27 authorized by this subchapter shall be issued.

28 (3) Subsequent elections may be called by the Governor if the
29 proposition fails, but each subsequent election may be held no earlier than
30 six (6) months after the date of the preceding election.

31
32 6-62-1109. Procedure for issuing bonds.

33 (a)(1) Prior to the issuance of any series of bonds, the Arkansas
34 Development Finance Authority shall adopt a resolution or trust indenture,
35 which may be a general resolution, series resolution, master trust indenture,
36 series indenture, supplemental indenture, or other form of resolution or

1 indenture as deemed necessary by the Arkansas Development Finance Authority
2 authorizing the issuance of the series of bonds.

3 (2) Each resolution or trust indenture shall contain the terms,
4 covenants, and conditions as are deemed desirable and consistent with this
5 subchapter, including, without limitation, those pertaining to the
6 establishment and maintenance of funds and accounts, the deposit and
7 investment of the bond proceeds and any pledged revenues, and the rights and
8 obligations of the State of Arkansas, its officers and officials, the
9 Arkansas Development Finance Authority, and the registered owners of the
10 bonds.

11 (3) All bonds issued under this subchapter shall be on a parity
12 as to security. The resolutions or trust indentures of the Arkansas
13 Development Finance Authority may provide for the execution and delivery by
14 the Arkansas Development Finance Authority of a trust indenture or trust
15 indentures, with one (1) or more banks or trust companies located within or
16 without this state, containing any of the terms, covenants, and conditions
17 described in this section and any other terms and conditions deemed necessary
18 by the Arkansas Development Finance Authority, which trust indenture or trust
19 indentures shall be binding upon the Arkansas Development Finance Authority
20 and the State of Arkansas, and their respective officers and officials.

21 (b) Any resolution or trust indenture adopted or executed under this
22 section may provide for the retirement and defeasance of the bonds by the
23 depositing of cash or investments in trust to be maintained for that purpose.
24 When the provisions of the resolution or trust indenture are complied with,
25 the bonds being refunded shall not be deemed to be bonds outstanding for the
26 purposes of this subchapter.

27
28 6-62-1110. Terms of bonds.

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

30 (1) The bonds shall be issued whether or not the interest is
31 subject to federal taxation, in series, as set forth in this section, in
32 amounts sufficient to finance all or part of project costs or to refund bonds
33 with the respective series to be designated by the year in which issued and,
34 if more than one (1) series is to be issued in a particular year, by
35 alphabetical designation;

36 (2) The bonds of each series shall have such date or dates as

1 the Arkansas Development Finance Authority shall determine and shall mature,
2 or be subject to mandatory sinking fund redemption, over a period ending not
3 later than thirty (30) years after the date of issue of each series; and

4 (3) The bonds of each series shall bear interest at the rate or
5 rates determined by the Arkansas Development Finance Authority at the time of
6 the sale of the bonds. The bonds may bear interest at either a fixed or a
7 variable rate, or may be convertible from one (1) interest rate mode to
8 another, and the interest shall be payable at such times as the Arkansas
9 Development Finance Authority shall determine;

10 (4) As determined by the Arkansas Development Finance Authority,
11 the bonds:

12 (A) Shall be issued in the form of bonds registered as to
13 both principal and interest without coupons;

14 (B) May be in any denominations and made exchangeable for
15 bonds of another form or denomination, bearing the same rate of interest;

16 (C) May be made payable at designated places within or
17 without the State of Arkansas;

18 (D) May be made subject to redemption prior to maturity in
19 any manner and for any redemption prices; and

20 (E) May contain other terms and conditions; and

21 (5) Each bond shall be executed with the original or facsimile
22 signatures of the Governor, the Secretary of State, and the Chair of the
23 Arkansas Development Finance Authority and shall have affixed or imprinted on
24 the bond the Great Seal of the State of Arkansas. Delivery of the bonds so
25 executed shall be valid, notwithstanding any change in the persons holding
26 the offices occurring after the bonds have been executed.

27 (6) The bonds shall have all the qualities of negotiable
28 instruments under the laws of the State of Arkansas, subject to the
29 provisions regarding registration of ownership set forth in this section or
30 in the resolution or trust indenture authorizing the bonds.

31
32 6-62-1111. Sale of bonds.

33 (a) The bonds may be sold in the manner, either at private or public
34 sale, and upon terms as the Arkansas Development Finance Authority shall
35 determine to be reasonable and expedient for effectuating the purposes of
36 this subchapter. The bonds may be sold at a price acceptable to the Arkansas

1 Development Finance Authority, which may include a discount or a premium.

2 (b) If the bonds are to be sold at public sale, the Arkansas
3 Development Finance Authority shall give notice of the offering of the bonds
4 in a manner reasonably designed to notify participants in the public finance
5 industry that the offering is being made. The Arkansas Development Finance
6 Authority shall set the terms and conditions of bidding, including the basis
7 on which the winning bid will be selected.

8 (c) The Arkansas Development Finance Authority may:

9 (1) Structure the sale of bonds utilizing financing techniques
10 recommended by its professional advisors in order to take advantage of market
11 conditions and obtain the most favorable interest rates consistent with the
12 purposes of this subchapter;

13 (2) Enter into ancillary agreements in connection with the sale
14 of the bonds that are necessary and advisable, including, without limitation,
15 bond purchase agreements, remarketing agreements, letters of credit, or
16 reimbursement agreements; and

17 (3) Enter into an interest rate exchange agreement or similar
18 agreement or contract with any person on a competitive or negotiated basis
19 under the terms and conditions as the Arkansas Development Finance Authority
20 shall determine but in compliance with § 15-5-317.

21
22 6-62-1112. Transfer of funds for debt service.

23 (a)(1) On or before the commencement of each fiscal year, the Chief
24 Fiscal Officer of the State shall:

25 (A) Determine the estimated amount required for payment of
26 all or a part of debt service on the bonds issued under this subchapter
27 during the fiscal year less the amount available for the payment of debt
28 service from estimated moneys to be available to the Arkansas Development
29 Finance Authority from other sources, if any; and

30 (B) Certify the amount computed under subdivision
31 (a)(1)(A) of this section to the Treasurer of State who shall transfer the
32 certified amount from the General Revenue Fund Account of the State
33 Apportionment Fund to a trust fund established by the resolution or trust
34 indenture authorizing the bonds as a bond or sinking fund in order to provide
35 for payment of all or part of the debt service on the bonds issued under this
36 subchapter.

1 (2) Payments shall be made into the bond or sinking fund not
2 later than one (1) day prior to the due date for the payment of the debt
3 service.

4 (b) The obligation to make periodic transfers from the General Revenue
5 Fund Account of the State Apportionment Fund to the bond or sinking fund
6 shall constitute a first charge against the General Revenue Fund Account
7 prior to all other uses to which general revenues are devoted, either under
8 present law or under any laws that may be enacted in the future. However, to
9 the extent other general obligation bonds of the State of Arkansas may
10 subsequently be incurred, all general obligation bonds shall rank on a parity
11 of security with respect to payment from the General Revenue Fund Account.

12 (c) The resolution or trust indenture authorizing or securing the
13 bonds issued shall identify the funds to which moneys shall be credited and
14 used for the purposes identified in this subchapter. For those purposes, the
15 holder of the trust funds is designated as the disbursing officer to
16 administer those funds in accordance with this subchapter.

17 (d) Moneys in the bond or sinking fund over and above the amount
18 necessary to ensure the prompt payment of debt service on the bonds, may be
19 used for the redemption of bonds prior to maturity in the manner and in
20 accordance with the provisions pertaining to redemption prior to maturity, as
21 set forth in the resolution or trust indenture authorizing or securing the
22 bonds.

23
24 6-62-1113. Sources of repayment.

25 (a) The bonds shall be direct general obligations of the State of
26 Arkansas for the payment of the debt service on which the full faith and
27 credit of the state are irrevocably pledged so long as any of the bonds are
28 outstanding.

29 (b) The bonds shall be payable from the general revenues of the state
30 and the amount of general revenues as is necessary is pledged to the payment
31 of debt service on the bonds and shall be and remain pledged for those
32 purposes. Each authorizing resolution or trust indenture may provide for a
33 reserve, credit enhancement, bond insurance, surety bond, or liquidity
34 facility for the bonds.

35
36 6-62-1114. Deposit and investment of proceeds.

1 (a) The proceeds from the sale of the bonds shall be deposited by the
2 recipient, as received, into trust funds or accounts in the name of the
3 Arkansas Development Finance Authority established pursuant to the resolution
4 or trust indenture authorizing or securing such bonds to accomplish the
5 purposes of this subchapter in amounts or portions as set forth in the
6 resolution or trust indenture securing the bonds.

7 (b)(1) The holder of the trust funds shall establish separate accounts
8 and subaccounts within the applicable fund to correspond to the applicable
9 series of bonds.

10 (2) In addition and under the resolution or trust indenture
11 authorizing or securing the bonds, there may be created other funds,
12 accounts, or subaccounts as the Arkansas Development Finance Authority may
13 determine to be necessary or desirable to accomplish the purposes of this
14 subchapter.

15 (c) All procedures and methods for application of proceeds of any
16 series of bonds to the financing of project costs shall be developed in
17 consultation with the Arkansas Higher Education Coordinating Board and the
18 Chief Fiscal Officer of the State, set forth in the resolution or trust
19 indenture authorizing or securing the bonds, and maintained as part of the
20 records of the Arkansas Development Finance Authority.

21 (d) The holder and administrator of funds, comprised in whole or in
22 part of proceeds of bonds or disbursements from funds established under this
23 subchapter, shall be required by appropriate provision of the resolution or
24 trust indenture authorizing or securing the bonds issued to assist the
25 Arkansas Development Finance Authority in preparing any report related to the
26 bonds that may be required by this subchapter or other applicable federal or
27 state law.

28 (e) The proceeds from the sale of the bonds and any money held in any
29 funds created under or authorized by this subchapter may be invested and
30 reinvested in accordance with the resolution or trust indenture authorizing
31 or securing the bonds issued and shall be invested by or at the direction of
32 the Arkansas Development Finance Authority to the fullest extent practicable
33 pending disbursement for the purposes intended in any of the following:

34 (1) Direct obligations of the United States, including
35 obligations issued or held in book entry form on the books of the United
36 States Department of the Treasury or obligations the principal of and

1 interest on which are unconditionally guaranteed by the United States;

2 (2) Bonds, debentures, notes, or other evidences of indebtedness
3 issued or guaranteed by any United States government agency if the
4 obligations are backed by the full faith and credit of the United States;

5 (3) Non-full faith and credit senior debt obligations issued or
6 guaranteed by United States government agencies;

7 (4) Money market funds investing exclusively in the investments
8 described in subdivisions (e)(1)-(3) of this section;

9 (5)(A) Certificates of deposit providing for deposits secured at
10 all times by collateral described in subdivisions (e)(1)-(3) of this section.

11 (B) The certificates must be issued by commercial bank
12 deposits which are insured by the Federal Deposit Insurance Corporation and
13 collateral of which must be held by a third party.

14 (C) The holder of the trust funds must have a perfected
15 first security interest in the collateral;

16 (6) Certificates of deposit, savings accounts, deposit accounts,
17 or money market deposits, all of which are fully insured by the Federal
18 Deposit Insurance Corporation;

19 (7) Bonds or notes issued by this state, any municipality,
20 county, or school district in this state or by any agency or instrumentality
21 of this state;

22 (8) Investment agreements with financial institutions or
23 insurance companies that are rated in one (1) of the two (2) highest rating
24 categories of a nationally recognized rating agency;

25 (9)(A) Repurchase agreements providing for the transfer of
26 securities from a dealer bank or securities firm to the holder of the trust
27 funds and the transfer of cash from the holder of the trust funds to the
28 dealer bank or securities firm with an agreement that the dealer bank or
29 securities firm will repay the cash plus a yield to the holder of the trust
30 funds in exchange for the securities at a specified date.

31 (B) Repurchase agreements shall satisfy the following
32 criteria:

33 (i) Repurchase agreements must be between the holder
34 of the trust funds and a dealer bank or securities firm described as follows:

35 (a) Dealers with at least one hundred million
36 dollars (\$100,000,000) in capital; or

1 (b) Banks whose deposits are insured by the
2 Federal Deposit Insurance Corporation; and

3 (ii) The written repurchase agreement contract must
4 include the following:

5 (a) Securities that are acceptable for
6 transfer are those listed in subdivisions (e)(1)-(3) of this section;

7 (b) The term of the repurchase agreement may
8 not exceed thirty (30) calendar days;

9 (c) The collateral must be delivered to the
10 holder of the trust funds, a trustee if a trustee is not supplying the
11 collateral, or a third party acting as agent for the trustee if the trustee
12 is supplying the collateral before or simultaneously with payment; and

13 (d)(1) The securities must be valued weekly,
14 marked-to-market at current market price plus accrued interest.

15 (2)(A) The value of collateral must be
16 equal to one hundred three percent (103%) of the amount of cash transferred
17 by the holder of the trust funds to the dealer bank or security firm under
18 the repurchase agreement plus accrued interest.

19 (B) If the value of securities
20 held as collateral declines below one hundred three percent (103%) of the
21 value of the cash transferred by the holder of the trust funds, then
22 additional cash or acceptable securities, or both, must be transferred and
23 held by the holder of the trust funds; and

24 (10) Any other investment authorized by state law.

25
26 6-62-1115. Use of bond proceeds.

27 (a) The proceeds of the bonds issued under this subchapter for
28 nonrefunding purposes, after the funding of any necessary reserve and the
29 costs associated with the issuance of and security for the bonds, shall only
30 be disbursed for project costs when requisitioned by the Chair of the
31 Arkansas Higher Education Coordinating Board or his or her designee, and
32 approved by the Chief Fiscal Officer of the State or his or her designee.

33 (b) The requisition under subsection (a) of this section shall certify
34 that the funds disbursed are for the payment of project costs that are
35 authorized to be financed under this subchapter and that have been duly
36 approved by the Arkansas Higher Education Coordinating Board.

1 (c) The proceeds of the bonds issued pursuant to this subchapter for
2 refunding purposes, after the funding of any necessary reserve and costs
3 associated with the issuance of and security for the bonds and the defeasance
4 of the bonds to be refunded, shall be used by the Arkansas Development
5 Finance Authority to directly pay or establish a trust fund to serve as an
6 escrow account for the purpose of paying or defeasing bonds issued under this
7 subchapter or under the Arkansas College Savings Bond Act of 1989, § 6-62-701
8 et seq.

9
10 6-62-1116. Refunding bonds.

11 (a)(1) The Arkansas Development Finance Authority may issue bonds for
12 the purpose of refunding bonds previously issued pursuant to this act or the
13 Arkansas College Savings Bond Act of 1989, § 6-62-701 et seq.

14 (2) To the extent that the refunding bonds are issued to refund
15 bonds issued under this subchapter and the principal amount of the refunding
16 bonds is not in a greater principal amount than the outstanding principal
17 amount of the bonds being refunded, the principal amount of the refunding
18 bonds shall not be subject to the two hundred fifty million dollar limit in §
19 6-62-1105.

20 (b) The refunding bonds shall be general obligations of the State of
21 Arkansas, secured as set forth in this subchapter, and secured and sold in
22 accordance with the provisions of this subchapter.

23 (c) The proceeds of the refunding bonds may either be applied to the
24 payment of the bonds being refunded or deposited in trust and there
25 maintained in cash or investments for the retirement of the bonds refunded,
26 as shall be specified by the Arkansas Development Finance Authority and the
27 authorizing resolution or trust indenture. The principal amount of the bonds
28 refunded that have been paid or defeased shall not be deemed outstanding for
29 purposes of this subchapter.

30 (d)(1) The authorizing resolution or trust indenture securing the
31 refunding bonds may provide, if the bonds being refunded were issued under
32 this subchapter, that the refunding bonds shall have the same security for
33 their payment as provided for the bonds being refunded.

34 (2) Refunding bonds shall be sold and secured in accordance with
35 the provisions of this subchapter pertaining to the sale and security of the
36 bonds.

1 (3) Other than approval of the resolution or trust indenture
2 under which refunding bonds are issued by appropriate action of the Arkansas
3 Development Finance Authority, no additional action or approval for the
4 issuance of refunding bonds shall be required to be taken by the Arkansas
5 Higher Education Coordinating Board or the Chief Fiscal Officer of the state
6 under this subchapter or as otherwise may be provided by other law.

7
8 6-62-1117. Tax exemption.

9 All bonds issued under this subchapter, and interest on the bond
10 proceeds, shall be exempt from all state taxes, including income,
11 inheritance, and property taxes. The bonds shall be eligible to secure
12 deposits of all public funds and shall be legal for investment of municipal,
13 county, bank, fiduciary, insurance company, and trust funds.

14
15 6-62-1118. Employment of professionals.

16 The Arkansas Development Finance Authority is authorized to retain
17 those professionals as it deems necessary to accomplish the issuance and sale
18 of the bonds, including, without limitation, legal counsel, financial
19 advisors, underwriters, trustees, paying agents, and remarketing agents.

20
21 6-62-1119. Construction.

22 (a) This subchapter shall be liberally construed to accomplish its
23 purposes. This subchapter shall constitute the sole authority necessary to
24 accomplish the purposes of this subchapter and the provisions of other laws
25 pertaining to the development of technology projects and facility improvement
26 projects and the financing shall not apply, except as specifically set forth
27 in this subchapter.

28 (b) This subchapter shall be interpreted to supplement existing laws
29 conferring rights and powers upon the Arkansas Development Finance Authority
30 and the Arkansas Higher Education Coordinating Board, and the rights and
31 powers set forth in this subchapter shall be alternative methods for the
32 accomplishment of the purposes of this subchapter.

33
34 6-62-1120. Rights and liabilities – Enforcement.

35 (a) This subchapter shall constitute a contract between the State of
36 Arkansas and the registered owners of all bonds issued under this subchapter

1 which shall never be impaired. Any violation of terms of this subchapter,
2 whether under purported legislative authority or otherwise, shall be enjoined
3 by the courts at the suit of any bondholder or of any taxpayer.

4 (b) The courts, in a suit against the Arkansas Development Finance
5 Authority or the Arkansas Higher Education Coordinating Board, the Treasurer
6 of State, or other appropriate officer or official of this state, shall
7 prevent a diversion of any revenues pledged under this subchapter and shall
8 compel the restoration of diverted revenues by injunction or mandamus.

9 (c) Without limitation as to any other appropriate remedy at law or in
10 equity, any bondholder, by an appropriate action, including without
11 limitation, injunction or mandamus, may compel the performance of all
12 covenants and obligations of the State of Arkansas and its officers and
13 officials under this subchapter.

14
15 6-62-1121. Rights and liabilities – Commencement.

16 This subchapter shall not create any right of any character, and no
17 right of any character shall arise under or pursuant to this subchapter until
18 the first series of bonds authorized by this subchapter shall have been sold
19 and delivered. The issuance of bonds authorized by this subchapter shall not
20 impair or affect any outstanding bonds of the Arkansas Development Finance
21 Authority issued under the Arkansas College Savings Bond Act of 1989, § 6-62-
22 701 et seq.

23
24 6-62-1122. Judicial review – Priority.

25 All cases involving the validity of this subchapter or any portion of
26 this subchapter, or in any way arising under this subchapter or involving the
27 bonds issued under this subchapter, shall be deemed of public interest and
28 shall be advanced by all courts and heard as a preferred cause. All appeals
29 from judgments or decrees rendered in these cases must be taken within thirty
30 (30) days after the rendition of the judgment or decree.

31
32 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
33 General Assembly of the State of Arkansas that there is an immediate need for
34 a program to finance the design, development, equipping, acquisition,
35 improvement, and construction of technology projects and facility improvement
36 projects at state institutions of higher education within the state; that

1 such a program cannot be accomplished without the issuance of bonds secured
 2 by the general revenues of the state to finance the program; and that this
 3 act authorizes the issuance of the necessary bonds. Therefore, an emergency
 4 is declared to exist and this act being immediately necessary for the
 5 preservation of the public peace, health, and safety shall become effective
 6 on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,
 9 the expiration of the period of time during which the Governor may veto the
 10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is
 12 overridden, the date the last house overrides the veto.

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