

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/7/07 H3/14/07

A Bill

HOUSE BILL 2590

5 By: Representatives Wills, Glidewell, L. Evans, Wyatt, Davenport, Davis, Kidd, Allen, Hoyt, Reynolds,
6 Shelby, House, J. Roebuck, Pierce, King, Hyde, D. Hutchinson, L. Cowling, Stewart, Greenberg, George
7

For An Act To Be Entitled

10 AN ACT TO CREATE THE ARKANSAS HIGHWAY FINANCING
11 ACT OF 2007; TO ENSURE THE ECONOMIC DEVELOPMENT
12 OF THE STATE BY PROVIDING FOR BOND ISSUANCE FOR
13 THE ESSENTIAL INFRASTRUCTURE OF *INTERSTATES*; TO
14 AUTHORIZE THAT THE REPAYMENT OF THE BONDS BE
15 GUARANTEED BY THE FULL FAITH AND CREDIT OF THE
16 STATE; AND FOR OTHER PURPOSES.

Subtitle

18
19 *THE ARKANSAS HIGHWAY FINANCING ACT OF*
20 *2007: TO ENSURE THE ECONOMIC DEVELOPMENT*
21 *OF THE STATE BY PROVIDING FOR BOND*
22 *ISSUANCE FOR THE ESSENTIAL*
23 *INFRASTRUCTURE OF INTERSTATES.*

24
25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add an
29 additional subchapter to read as follows:

30 27-64-401. Title.

31 This subchapter shall be known and cited as the "Arkansas Highway
32 Financing Act of 2007".

33
34 27-64-402. Legislative findings and intent.

35 The General Assembly finds that:

36 (1) There is an immediate need for highway improvements



1 throughout the State of Arkansas in order to provide for the health, safety,
2 and welfare of its citizens and to promote economic development within the
3 state;

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

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

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

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

19
20 27-64-403. Definitions.

21 As used in this section:

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

25 (2) "Commission" means the State Highway Commission, created and
26 existing pursuant to Arkansas Constitution, Amendment 42;

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 costs
30 of paying agents and trustees, remarketing agent fees, credit enhancement
31 costs, and other amounts necessary in connection with the bonds;

32 (4) "Designated revenues" means:

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

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

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

11
12 27-64-404. Authorization – Purposes.

13 (a) The State Highway Commission is authorized, subject to the
14 approval of the voters in a statewide election, to issue bonds to be known as
15 State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in
16 a total principal amount not to exceed five hundred seventy-five million
17 dollars (\$575,000,000).

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

19 (1) Accelerating certain highway improvement projects already
20 underway or scheduled;

21 (2) Funding new highway improvement projects;

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

24 (4) Paying the costs of issuance of the bonds, including the
25 costs of bond issuance or other credit enhancement.

26
27 27-64-405. Projects to be financed – Governor proclamation.

28 (a) The State Highway Commission shall prepare and distribute to the
29 Governor a report setting forth the specific highway improvement projects
30 which would be financed if all of the authorized bonds were to be issued and
31 the estimated cost of each project.

32 (b) Upon receipt of the report described in subsection (a) of this
33 section, the Governor shall, if the Governor deems it to be in the public
34 interest, by proclamation call an election on the question of issuing the
35 bonds.

36 (c) The report of projects described in subsection(a) of this section

1 may be modified by the commission from time to time in accordance with
2 Arkansas Constitution, Amendment 42.

3
4 27-64-406. Election.

5 (a)(1) No State of Arkansas Federal Highway Grant Anticipation and Tax
6 Revenue Bonds shall be issued under this subchapter unless the issuance of
7 bonds has been approved by a majority of the qualified electors of the state
8 voting on the question at a statewide election called by proclamation of the
9 Governor as provided under § 27-64-405.

10 (2)(A) An election under this section may be in conjunction with
11 a general election, or it may be a special election.

12 (B)(i) A special election held under this section shall
13 occur on the second Tuesday of any month, except as otherwise provided in
14 this subsection (a).

15 (C) A special election that is held in months in which a
16 presidential preferential primary election, preferential primary election,
17 general primary election, or general election is scheduled to occur shall be
18 held on the date of the presidential preferential primary election,
19 preferential primary election, general primary election, or general election.

20 (D)(i) If a special election is held on the date of the
21 presidential preferential primary election, preferential primary election, or
22 general primary election, the issue or issues to be voted upon at the special
23 election shall be included on the ballot of each political party.

24 (ii) However, separate ballots containing only the
25 issue or issues to be voted upon at the special election shall be prepared
26 and made available to voters requesting a separate ballot.

27 (iii) No voter shall be required to vote in a
28 political party's presidential preferential primary election, preferential
29 primary election, or general primary election in order to be able to vote in
30 the special election.

31 (E) Special elections scheduled to occur in a month in
32 which the second Tuesday is a legal holiday shall be held on the third
33 Tuesday of the month.

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 proposition
7 in substantially the following form:

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

16
17 “The bonds shall be general obligations of the State of Arkansas, payable
18 from certain designated revenues and also secured by the full faith and
19 credit of the State of Arkansas, including its general revenues. Pursuant to
20 the Arkansas Highway Financing Act of 2007, the "Bond Act", the bonds will be
21 repaid: (1) First, from revenues derived from federal highway assistance
22 funding allocated to the State of Arkansas designated as federal highway
23 interstate maintenance funds; and (2) Second, from revenues derived from the
24 excise tax levied on distillate special fuels (diesel) pursuant to Arkansas
25 Code § 26-56-201(e) that are available for expenditure after any
26 distributions required by the Arkansas Highway Financing Act of 2007. To the
27 extent that designated revenues are insufficient to make timely payment of
28 debt service on the bonds, the payment shall be made from the general
29 revenues of the State of Arkansas. The bonds shall be issued pursuant to the
30 authority of and the terms set forth in the Bond Act.”

31
32 “Pursuant to the Bond Act, the specific highway improvements to be
33 financed are limited to restoration and improvements to all of the interstate
34 highway systems within the state, including roadways, bridges, or rights-of-
35 way under the jurisdiction of the State Highway Commission, which shall also
36 include the acquisition, construction, reconstruction, and renovation of such

1 interstate highway systems and facilities appurtenant or pertaining thereto.”

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

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

20
21 “FOR issuance of State of Arkansas Federal Highway Grant Anticipation and
22 Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge of
23 the full faith and credit of the State of Arkansas to further secure the
24 bonds.....[]”

25
26 “AGAINST issuance of State of Arkansas Federal Highway Grant Anticipation
27 and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge
28 of the full faith and credit of the State of Arkansas to further secure such
29 bonds[]”

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

33 (2) The vote shall be canvassed and the result of the vote
34 declared in each county by the board. Within ten (10) days after the date of
35 the election, the results shall be certified by the boards to the Secretary
36 of State, who shall tabulate all returns received and certify to the Governor

1 the total vote for and against the proposition submitted pursuant to this
2 subchapter.

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

6 (2) The results as proclaimed shall be conclusive unless a
7 complaint challenging the proclaimed results is filed in Pulaski County
8 Circuit Court within thirty (30) days after the date of the publication.

9 (f)(1) If a majority of the qualified electors voting on the
10 proposition vote in favor of the proposition, the commission shall proceed
11 with the issuance of the bonds in the manner and on the terms set forth in
12 this subchapter.

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

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

19
20 27-64-407. Procedure for issuing State of Arkansas Federal Highway
21 Grant Anticipation and Tax Revenue Bonds.

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

26 (b) Each resolution adopted under this section shall contain the
27 terms, covenants, and conditions as are deemed desirable and consistent with
28 this subchapter, including, without limitation, those pertaining to:

29 (1) The establishment and maintenance of funds and accounts;

30 (2) The deposit and investment of the federal highway assistance
31 payments and bond proceeds; and

32 (3) The rights and obligations of the state, its officers and
33 officials, the commission, and the registered owners of the bonds.

34 (c)(1) 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.

4 (2) The trust indenture or trust indentures shall be binding
5 upon the commission and the state, and their respective officers and
6 officials.

7
8 27-64-408. Terms of bonds.

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

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

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

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

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

27 (5) The commission shall determine:

28 (A) The denominations of the bonds;

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

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

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

35 (E) Any other terms and conditions; and

36 (6)(A) Each bond shall be executed with the facsimile signatures

1 of the chair and the secretary of the commission and shall have affixed or
2 imprinted thereon the seal of the commission.

3 (B) Delivery of the bonds so executed shall be valid
4 notwithstanding any change in the persons holding such offices occurring
5 after the bonds have been executed.

6
7 27-64-409. Sale of bonds.

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

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

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

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

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

26
27 27-64-410. Employment of professionals.

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

33
34 27-64-411. Sources of repayment.

35 (a) The State of Arkansas Federal Highway Grant Anticipation and Tax
36 Revenue Bonds shall be general obligations of the State of Arkansas secured

1 and payable from the designated revenues and the general revenues of the
2 state.

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

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

9 (2) Revenues derived from the distillate special fuels tax
10 levied under § 26-56-201(e) that are available for expenditure after any
11 distributions required by the Arkansas Highway Financing Act of 1999, § 27-
12 64-201 et seq.

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

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

22
23 27-64-412. Investment of proceeds.

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

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

34
35 27-64-413. Refunding bonds.

36 (a) The State Highway Commission may issue the State of Arkansas

1 Federal Highway Grant Anticipation and Tax Revenue Bonds for the purpose of
2 refunding bonds previously issued pursuant to this subchapter, provided that
3 the total amount of bonds outstanding after the refunding is completed does
4 not exceed the total amount authorized by this subchapter.

5 (b) The refunding bonds shall be special obligations of the State of
6 Arkansas, secured as set forth in this subchapter, and shall be secured and
7 sold in accordance with the provisions of this subchapter.

8
9 27-64-414. Powers of commission.

10 (a) All powers granted to the State Highway Commission under this
11 subchapter shall be deemed in addition to the powers of the commission under
12 Arkansas Constitution, Amendment 42, and the laws of the State of Arkansas.

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

16
17 27-64-415. Tax exemption.

18 (a) All State of Arkansas Federal Highway Grant Anticipation and Tax
19 Revenue Bonds issued under this subchapter and interest on the bonds shall be
20 exempt from all taxes of the State of Arkansas, including income,
21 inheritance, and property taxes.

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

25
26 */s/ Wills, et al*
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