

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1964

Bill Subtitle: TO AMEND UNCODIFIED ACT 1007 OF 1995.

Basic Change :

Sponsor: Rep. Jett

HB1964 amends that portion of Act 1007 of 1995 calling for an election regarding the issuance of highway bonds. Act 1007 originally provided for up to two elections to be held regarding the issuance of bonds with no election to occur later than December 31, 1996. HB1964 repeals the December, 31, 1996 limitation allowing the Governor to refer the issuance of bonds under Act 1007 to another vote.

Act 1007 was one of four bills enacted in 1995 regarding highway funding. Act 1007 called for a vote of the people regarding the issuance of up to \$3.5B of highway bonds to construct and improve highways in this state. The other Acts were:

- Act 1005 – Levied a 6.5% wholesale tax on the gross receipts from the sale of gasoline. This tax was to be effective only if the voters approved the issuance of bonds under Act 1007. The proceeds from this tax were to be dedicated to the repayment of bonds issued pursuant to Act 1007;
- Act 1006 – Referred to a vote of the people a tax increase of 5¢ per gallon on diesel fuel sold in this state. This tax was to be effective only if the tax was approved by the voters and if the voters also approved the issuance of bonds under Act 1007. The proceeds from this tax were dedicated to the repayment of bonds issued pursuant to Act 1007;
- Act 1008 – Levied a ½% sales and use tax that is in addition to all other sales and use taxes levied by the state. This tax was to be effective only if the voters approved the issuance of bonds under Act 1007. The proceeds were dedicated to the repayment of bonds issued pursuant to Act 1007.
- Acts 1006 and 1007 were rejected by the voters prior to December 31, 1996 and a second vote was not called before expiration of the deadline for conducting a second election. If HB1964 is enacted and voters subsequently approve the issuance of bonds under Act 1007, the 6.5% wholesale tax on gasoline under Act 1005 and the ½% additional sales and use tax imposed by Act 1008 will become effective.

Revenue Impact :

None.

Taxpayer Impact :

None.

Resources Required :

None.

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Time Required :

None.

Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

HB1964 proposes to allow another vote on the issuance of highway bonds pursuant to Act 1007 of 1995. Act 1007 originally provided for an initial vote regarding issuance of the bonds and, if a majority of the voters voted against issuance of the bonds, the Governor could call for a second vote no earlier than six months after the initial vote and no later than December 31, 1996.

HB1964 presents the following legal questions:

1. If a second vote is held under Act 1007 and the voters approve the issuance of bonds, will the 6.5% wholesale sales tax on gasoline levied by Act 1005 of 1995 and the ½% sales and use tax levied by Act 1008 of 1995 become effective? It is likely that a legal challenge will be filed to determine whether these taxes may become effective over 20 years from the date they were first enacted; however, as currently drafted, these taxes levied by Acts 1005 and 1008 would become effective.

2. Does HB 1964 run afoul of Article 5, Section 23 of the Arkansas Constitution which states, "*No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be reenacted and published at length*"? There are relatively few cases interpreting this constitutional provision to provide guidance regarding this question. The Arkansas Supreme Court has determined that when the General Assembly enacted a series of related Acts in 1915, 1919, and 1920 and the 1915 and 1919 Acts were determined to be void, the 1920 Act was inoperative and void when it attempted to give validity to the two prior Acts. The Court stated, "*[I]f the original act attempting to create the improvement district was dead because it was inoperative, a subsequent act could not vitalize it or validate a void assessment for road work attempted to be made under it.*" Based on this reasoning, the Supreme Court could determine that Act 1007 was void because it expired on December 31, 2016 and any attempt by HB1964 to revitalize Act 1007 now rather than to enact a new bond authorization violates Article 5, Section 23 of the Arkansas Constitution. The lack of clear guidance from existing case law makes this issue an open question.