

Hall of the House of Representatives
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 2716

"AN ACT TO IMPLEMENT AMENDMENT 82 TO THE ARKANSAS CONSTITUTION."

Amendment No. 1 to House Bill No. 2716.

Amend House Bill No. 2716 as originally introduced:

Delete line 5 and substitute:

"By: Representative Thyer"

AND

Delete Section 1 and substitute:

"SECTION 1. Arkansas Code Title 15, Chapter 4, Subchapter 31 as created by Section 1 of the act of the 2005 regular session that was introduced as Section 1 of Senate Bill 507 is repealed ab initio.

~~15-4-3101. Title.~~

~~This subchapter shall be known and may be cited as the "Arkansas Amendment 82 Implementation Act".~~

~~15-4-3102. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Amendment 82 agreement" means a contract between the state and a sponsor under which the state is to provide Amendment 82 bond financing in exchange for the sponsor agreeing to make an investment and to locate a new business or substantially expand an existing business in the State of Arkansas in accordance with the requirements of Amendment 82 and this subchapter. The agreement shall contain, at minimum, the following provisions:~~

~~(A) The infrastructure needs to be provided by the state in support of the qualified Amendment 82 project and financed under Amendment 82 and this subchapter;~~

~~(B) A description of all other economic incentives to be provided by the state in connection with the qualified Amendment 82 project;~~

~~(C) The commitments of the sponsor with regard to investment and job creation associated with the qualified Amendment 82 project, including timetables for meeting and maintaining the investment and job creation requirements;~~

~~(D) The agreement of the sponsor to make all specified records pertaining to investment and job creation requirements under~~



~~Amendment 82 available for annual audit by the chief fiscal officer and, upon request but no more often than annually, by the Office of Economic and Tax Policy or a person or entity retained by the Office of Economic and Tax Policy;~~

~~(E) Performance benchmarks and economic goals of the qualified Amendment 82 project; and~~

~~(F) The penalties to be applied if the sponsor does not satisfy its commitments under the Amendment 82 agreement;~~

~~(2) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company paid benefits, of all new full time permanent employees hired after the execution date of the Amendment 82 agreement divided by forty (40) and then divided by the number of new full time permanent employees;~~

~~(3) "Bonds" means general obligation bonds issued under Amendment 82 and this subchapter;~~

~~(4) "Chief fiscal officer" means the Chief Fiscal Officer of the State of Arkansas who is also the Director of the Department of Finance and Administration;~~

~~(5) "Contractual employee" means an employee who:~~

~~(A) May be included in the payroll calculations of a sponsor qualifying for bond financing under Amendment 82 and this subchapter and is under the direct supervision of the sponsor receiving benefits under Amendment 82 and this subchapter but is an employee of a business other than the one receiving benefits under Amendment 82 and this subchapter;~~

~~(B) Otherwise meets the requirements of a new full time permanent employee of the sponsor receiving benefits under Amendment 82 and this subchapter;~~

~~(C) Receives an average hourly wage that exceeds the lesser of:~~

~~(i) The county average hourly wage for the county in which the position or job is located; or~~

~~(ii) The state average hourly wage; and~~

~~(D) Receives a benefits package, including without limitation, health and retirement benefits, comparable to direct employees of the sponsor receiving benefits under Amendment 82 and this subchapter;~~

~~(6) "County average hourly wage" means the weighted average weekly earnings for Arkansas residents in all industries countywide as calculated by the Arkansas Employment Security Department in its most recent "Annual Covered Employment and Earnings" publication divided by forty (40);~~

~~(7) "Debt service" means principal, interest, redemption premiums, if any, and servicing fees relative to the bonds, including, without limitation, trustees' fees, paying agents' fees, dissemination agents' fees, administrative fees, issuer's fees, guarantee fees, counsel fees, and fees related to arbitrage compliance or rebate calculations;~~

~~(8)(A) "Existing employee" means an employee hired by a sponsor before the date the Amendment 82 agreement was executed.~~

~~(B) An existing employee may be considered a new full time permanent employee for purposes of Amendment 82 and this subchapter only if:~~

~~(i) The position or job filled by the existing employee was created in accordance with the Amendment 82 agreement; and~~

~~(ii)(a) The position vacated by the existing employee was filled by a subsequent employee who was not an existing~~

~~employee; or~~

~~(b) No subsequent employee will be hired because the sponsor no longer conducts the particular business activity requiring that employee;~~

~~(9) "Federal Deposit Insurance Corporation" means the federal agency by that name or any successor agency that insures deposits of commercial banks;~~

~~(10) "Gross general revenues" means the revenues described and enumerated in § 19-6-201 et seq. or in any successor law;~~

~~(11) "Infrastructure needs" means:~~

~~(A) Land acquisition;~~

~~(B) Site preparation;~~

~~(C) Road and highway improvements;~~

~~(D) Rail spur construction;~~

~~(E) Water service;~~

~~(F) Wastewater treatment;~~

~~(G) Employee training, which may include equipment used for the training;~~

~~(H) Environmental mitigation;~~

~~(I) Training and research facilities and the necessary equipment for the facilities; or~~

~~(J) Any other facility, activity, or infrastructure determined by the General Assembly to fall within the parameters of Amendment 82;~~

~~(12)(A) "Investment" means money expended by the sponsor on capital assets physically located within the state and directly related to the qualified Amendment 82 project, but which are not required to be owned by the sponsor.~~

~~(B) Investment shall not include amounts expended in aid of the qualified Amendment 82 project by the state under Amendment 82 and this subchapter, or otherwise, or amounts expended in aid of the qualified Amendment 82 project by a local entity, however financed, which are not required to be repaid by the sponsor;~~

~~(13) "Letter of commitment" means a binding agreement signed by a sponsor and the Department of Economic Development, which contains, at minimum, the following provisions:~~

~~(A) A determination by the Department of Economic Development that the sponsor has the financial capability, business history, and corporate intent to implement and maintain a qualified Amendment 82 project;~~

~~(B) A commitment by the sponsor that the sponsor intends to locate a new business or substantially expand an existing business in the State of Arkansas that will require an investment by the sponsor of more than five hundred million dollars (\$500,000,000) and will create over five hundred (500) new jobs;~~

~~(C) A tentative timetable for development of the proposed project;~~

~~(D) The consequences if the sponsor does not satisfy its obligations under the letter of commitment; and~~

~~(E) A statement from the Department of Economic Development that its obligation under the letter of commitment is limited to presenting the letter of commitment and supporting documentation to the~~

~~Governor, who may or may not elect to present the proposal to the General Assembly for its consideration;~~

~~(14) "Local entity" means any nonprofit corporation, county, city of the first class, city of the second class, incorporated town, improvement district, school district, or any agency or instrumentality of the state, including the Arkansas Development Finance Authority and the Department of Economic Development;~~

~~(15) "Nationally recognized rating agency" means Moody's Investors Service, Standard & Poor's Ratings Service, Fitch, Inc., or any other nationally recognized rating agency approved by the Treasurer of State;~~

~~(16) "Net general revenues" means the amount specified in § 19-5-202(b)(2)(B)(iii), otherwise known as net general revenues of the state available for distribution;~~

~~(17) "New full time permanent employee" means a position or job that is created under an Amendment 82 agreement and that is filled by one (1) employee or contractual employee who is an Arkansas taxpayer. In order to count toward the job creation requirements of Amendment 82 and this subchapter:~~

~~(A) The position or job held by the employee must be filled for at least twenty six (26) consecutive weeks with an average of at least thirty (30) hours' work per week;~~

~~(B) The employee must receive an average hourly wage that exceeds the lesser of:~~

~~(i) The county average hourly wage for the county in which the position or job is located; or~~

~~(ii) The state average hourly wage;~~

~~(C) The employee must receive a benefits package, including, without limitation, health and retirement benefits; and~~

~~(D) The employee is not an existing employee;~~

~~(18)(A) "New job" means a position for a new full-time permanent employee created at a qualified Amendment 82 project in the state.~~

~~(B) "New job" shall not include a job filled by an existing employee;~~

~~(19) "Other needs" means financial or other noninfrastructure incentives that are approved by the General Assembly as part of a qualified Amendment 82 project and may include, without limitation, transactions that include loans, grants, or lease arrangements;~~

~~(20) "Outstanding bonded indebtedness" means the principal balance of all bonds issued under Amendment 82 and this subchapter;~~

~~(21) "Project costs" means:~~

~~(A) All or any part of the costs of developing a proposed or qualified Amendment 82 project and costs incidental or appropriate to the proposed or qualified Amendment 82 project, including, without limitation, all costs to the Department of Economic Development associated with the development or operation of a qualified Amendment 82 project in a supervisory capacity; and~~

~~(B) Costs incidental or appropriate to the financing of the proposed or qualified Amendment 82 project, including, without limitation, capitalized interest, costs of issuance, funding of appropriate reserves for the bonds, loan fees, guarantee fees, commitment fees, grant administration fees, surety bond premiums, bond insurance, credit enhancement, fees of nationally recognized rating agencies, liquidity~~

~~facilities fees, and costs for engineering, legal, and other administrative and consultant services;~~

~~(22) "Proposed project" means a project which if developed as proposed would meet the criteria for a qualified Amendment 82 project and is therefor properly considered under Amendment 82 and this subchapter;~~

~~(23) "Qualified Amendment 82 project" means a proposed project that has satisfied the requirements of Amendment 82 and this subchapter and with respect to which the General Assembly has approved the issuance of bonds under Amendment 82 and this subchapter;~~

~~(24) "Related entity" means any entity or person that bears a relationship to the sponsor as described in Section 267 of the Internal Revenue Code of 1986, as in existence on January 1, 2005;~~

~~(25) "Sponsor" means a sole proprietor, partnership, corporation, limited liability company, joint venture, or association taxable as a business entity or any combination of these entities that qualifies as an eligible business under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.; and~~

~~(26) "State average hourly wage" means the weighted average weekly earnings for Arkansas residents in all industries statewide as calculated by the Arkansas Employment Security Department in its most recent "Annual Covered Employment and Earnings" publication divided by forty (40).~~

~~15-4-3103. Amendment 82 project qualification.~~

~~(a)(1) The General Assembly in exercising its responsibilities under Section 1 of Amendment 82 to the Arkansas Constitution delegates, authorizes, and directs the Arkansas Department of Economic Development, the Arkansas Development Finance Authority, and the chief fiscal officer to undertake a review of all proposed projects following the procedures described in this section.~~

~~(2) If the Governor refers a proposed project to the General Assembly under subsection (h) of this section, the department and the authority shall prepare and provide to each member of the General Assembly the reports described in subsection (i) of this section after which the General Assembly shall make the final and definitive decisions concerning the proposed project as set forth in subsection (j) of this section.~~

~~(b)(1) As the lead economic development agency for the State of Arkansas, the Department of Economic Development may propose the use of Amendment 82 bonds to finance infrastructure and other needs in any combination in order to attract proposed projects to the State of Arkansas.~~

~~(2) In addition to powers conferred under other laws, the department may take any reasonable action necessary to carry out the purposes of Amendment 82 and this subchapter.~~

~~(3) The proposed use of Amendment 82 financing by the department shall not prohibit the department, the state, or any local entity from using any other available economic incentives in connection with a proposed project.~~

~~(c) The department shall initiate the process of selecting a proposed project for referral to the General Assembly by performing an economic impact and cost benefit analysis to evaluate the capability of a sponsor and the feasibility of a proposed project and to determine if the proposed project has the potential to be a qualified Amendment 82 project. The economic-impact and cost benefit analysis shall include all other economic incentives~~

~~offered by the state in connection with the proposed project.~~

~~(d) If the department determines that a proposed project has the potential to become a qualified Amendment 82 project, the department shall refer the proposal and the department's findings to the Arkansas Development Finance Authority so that the authority may perform an initial assessment of the feasibility and impact of issuing Amendment 82 bonds in connection with the proposed project, including the state's ability to cover projected debt service obligations and the impact on the overall rating of the state's general obligation bonded indebtedness, including, without limitation, bonds issued under Amendment 82 and this subchapter.~~

~~(e) If the authority's initial assessment is that Amendment 82 bond financing for the proposed project is feasible, the authority shall notify the department, and the department shall refer the proposal and the findings of the department and the authority to the chief fiscal officer for review of the impact of the proposed Amendment 82 bond financing on any agency or program supported from the gross general revenues under the Revenue Stabilization Law, § 19-5-101 et seq.~~

~~(f) If the chief fiscal officer's initial assessment is that the proposed Amendment 82 financing will not have a substantially negative impact on any agency or program supported from gross general revenues, the chief fiscal officer shall notify the department, and the department shall make a formal proposal to the sponsor detailing the state's proposed offer with respect to Amendment 82 financing and all other economic incentives offered by the state in connection with the proposed project.~~

~~(g)(1) If the sponsor of a proposed project determines to accept Amendment 82 financing, the sponsor and the department, on behalf of the state, shall sign a letter of commitment.~~

~~(2) The department shall forward the letter of commitment and the findings and recommendations of the department, authority, and chief fiscal officer to the Governor for review.~~

~~(3) The department shall also forward the letter of commitment, findings and recommendations of the department, authority, and chief fiscal officer, and all supporting documentation to the Office of Economic and Tax Policy on behalf of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. At the direction of the President Pro Tempore of the Senate or the Speaker of the House of Representatives, the office shall arrange for an independent confirmation of the economic impact and cost-benefit analysis performed by the department or an independent economic impact and cost-benefit analysis of the proposed project to be completed within twenty (20) working days after the receipt of the letter of commitment. All information forwarded to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by the department and any resulting information related to the confirmation of the department's economic impact and cost-benefit analysis or independent economic impact and cost-benefit analysis shall be considered working papers of the President Pro Tempore of the Senate and the Speaker of the House under § 25-19-105(b)(7) and shall not be open to inspection and copying by any citizen of the State of Arkansas and is specifically exempt from the requirements of § 25-19-105(a).~~

~~(h) If the Governor determines that it is in the best interest of the state to pursue Amendment 82 financing for the proposed project, the Governor shall refer the proposed project to the General Assembly in regular or~~

~~special session in order for the General Assembly to consider whether or not to approve the issuance of bonds under Amendment 82 and this subchapter.~~

~~(i)(1) In order to expedite review by the General Assembly, the department and the authority shall prepare and provide to each member of the General Assembly the reports described in subdivisions (i)(2) and (i)(3) of this section.~~

~~(2) The department's report shall include:~~

~~(A) A description of the proposed project;~~

~~(B)(i) An itemization of the proposed infrastructure needs and other needs to be financed with the proceeds derived from the sale of Amendment 82 bonds.~~

~~(ii) The itemization shall include estimated costs and details to the maximum extent available at the time of the report;~~

~~(C) A description of all other economic incentives to be provided by the state in connection with the proposed project;~~

~~(D) A description of the economic impact and cost benefit analyses of the proposed project for a period of at least ten (10) years that includes:~~

~~(i) The annual projected benefit to the state from increased sales and use tax and income tax revenue;~~

~~(ii) The annual projected cost to the state for each economic incentive offered to the sponsor in connection with the proposed project; and~~

~~(iii) The overall net present value benefit/cost ratio for the period of at least ten (10) years.~~

~~(E) The amount of bonds necessary to be issued to defray project costs and a budget of the project costs;~~

~~(F) A tentative time schedule setting forth the period of time during which the proceeds of the Amendment 82 bonds are to be expended;~~

~~(G) A certification by the Director of the Department of Economic Development that, under the terms of the letter of the commitment, the proposed project shall consist of an investment in the state of not less than five hundred million dollars (\$500,000,000) and shall create no fewer than five hundred (500) new jobs;~~

~~(H) A copy of the signed letter of commitment for the proposed project; and~~

~~(I) A copy of the unexecuted Amendment 82 agreement for the proposed project.~~

~~(3) The authority's report shall include:~~

~~(A) A schedule of projected debt service, including all fees, showing the annual principal and interest requirements for any Amendment 82 bonds outstanding, if applicable, and the projected debt service for the Amendment 82 bonds proposed to be issued for the proposed project;~~

~~(B) A projected schedule of revenues, if any, to be received by the state from the sponsor in connection with its use of the infrastructure needs and other needs associated with the proposed project;~~

~~(C) An initial plan of marketing for the bonds and a proposed schedule of issuance dates, including, without limitation, the number of series to be issued and an estimated timeline for the series based on the department's proposed spending schedule; and~~

~~(D) A preliminary and estimated sources and uses table.~~

~~(j) If the General Assembly determines that the proposed project is of~~

~~the nature intended by the electors of the state to be financed with Amendment 82 bonds and approves the Amendment 82 agreement, it shall take appropriate legislative action to:~~

~~(1) Declare the proposed project a qualified Amendment 82 project;~~

~~(2) Establish any additional parameters deemed necessary by the General Assembly for the general structure of the qualified Amendment 82 project, including, without limitation, penalty provisions;~~

~~(3) Authorize the execution of the Amendment 82 agreement in substantially the same form as presented to the General Assembly; and~~

~~(4) Authorize the issuance of Amendment 82 bonds.~~

~~15-4-3104. Amendment 82 agreement.~~

~~As soon as practicable after the General Assembly's approval of the issuance of bonds and before the Arkansas Development Finance Authority issues bonds, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Director of the Department of Economic Development, the President of the Arkansas Development Finance Authority, and the chief fiscal officer, all on behalf of the state, and the sponsor of the qualified Amendment 82 project shall execute the Amendment 82 agreement in substantially the same form as approved by the General Assembly.~~

~~15-4-3105. Penalties.~~

~~If the sponsor does not satisfy the minimum job creation and investment requirements specified in the Amendment 82 agreement within the time period specified in the Amendment 82 agreement, does not maintain the job creation requirements specified in the Amendment 82 agreement for the period of time specified in the Amendment 82 agreement, or fails to satisfy other terms of the Amendment 82 agreement, the sponsor shall be subject to specific penalties set forth in the Amendment 82 agreement and enacted in related legislation under § 15-4-3103(j).~~

~~15-4-3106. Compliance time period — Audit requirements.~~

~~(a) The Amendment 82 agreement shall specify a time period in which the sponsor must comply with the investment and job creation thresholds specified in the Amendment 82 agreement. Except as provided in subsection (b) of this section, the time period shall not exceed four (4) years from the date of enactment of related legislation under § 15-4-3103(j). In the event that the sponsor does not comply with the applicable time period, then the penalty provisions set forth in the Amendment 82 agreement and enacted in related legislation under § 15-4-3103(j) shall apply.~~

~~(b)(1) The sponsor may request a one year extension of the time period specified in the Amendment 82 agreement by submitting to the Director of the Department of Economic Development a written request with an explanation as to why the extension is necessary. The request shall be submitted at least ninety (90) days prior to the expiration of the time period specified in the Amendment 82 agreement.~~

~~(2) Upon receipt of a request to extend the applicable time period, the Director of the Department of Economic Development shall immediately notify the President of the Arkansas Development Finance Authority, the chief fiscal officer, and the Governor. The director of the department, the president of the authority, and the chief fiscal officer may~~

~~approve a request for a one year extension upon a determination that there is a valid economic reason for granting the extension.~~

~~(3) The sponsor shall not be granted more than three (3) one-year extensions of the applicable time period.~~

~~(c)(1) The sponsor shall maintain and make available records pertaining to investment and job creation requirements for annual audit by the chief fiscal officer and, upon request by no more often than annually, by the Office of Economic and Tax Policy or a person or entity retained by the Office of Economic and Tax Policy.~~

~~(2) The Arkansas Tax Procedure Act, § 26-18-101 et seq. shall apply to records maintained under subsection (c) of this section and any audits conducted of the records, including any audit conducted through the Office of Economic and Tax Policy.~~

~~(3) Records obtained or reviewed by the Office of Economic and Tax Policy under this section shall be considered working papers of the President Pro Tempore of the Senate and the Speaker of the House under § 25-19-105(b)(7) and shall not be open to inspection and copying by any citizen of the State of Arkansas and is specifically exempt from the requirements of § 25-19-105(a). However, a report of the audit shall be presented to the Legislative Council with respect to the status of the applicable qualified Amendment 82 project which details the sponsor's compliance with the provisions of the Amendment 82 agreement.~~

~~15-4-3107. Maximum ceiling on bond principal.~~

~~(a) In determining the maximum amount of Amendment 82 bonds that may be issued, the sum of the outstanding bonded indebtedness plus the principal amount of the proposed Amendment 82 bonds shall not exceed five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.~~

~~(b) It shall not be a violation of Amendment 82 or this subchapter or affect the validity of Amendment 82 bonds that were properly issued if net general revenues decline after Amendment 82 bonds are issued and the outstanding bonded indebtedness exceeds five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.~~

~~(c) Amendment 82 bonds that when issued complied with the five percent (5%) limitation may be refunded under Amendment 82 and this subchapter even if the outstanding bonded indebtedness before or after the refunding exceeds five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.~~

~~15-4-3108. Amendment 82 bonds.~~

~~(a) After the General Assembly's approval in regular or special session and the execution of the Amendment 82 agreement, the Arkansas Development Finance Authority, on behalf of the state, may issue bonds under Amendment 82 and this subchapter to be known as "Amendment 82 Bonds" in one (1) or more series up to the maximum principal amount approved by the General Assembly.~~

~~(b)(1) Bonds shall be issued for the purpose of financing infrastructure needs and other needs to support a qualified Amendment 82 project.~~

~~(2) The proceeds of the Amendment 82 bonds shall be applied:~~

~~(A) To the payment of project costs and the costs and expenses of issuance of the Amendment 82 bonds; or~~

~~(B) In connection with a qualified Amendment 82 project refinancing, to the repayment of indebtedness incurred to pay project costs and the costs and expenses of issuance of the Amendment 82 bonds.~~

~~15-4-3109. Series of bonds.~~

~~(a) The bonds shall be issued, whether or not the interest on the bonds is subject to federal taxation, in series in amounts sufficient to finance or refinance all or any part of a qualified Amendment 82 project's costs with the respective series to be designated by the year in which issued and, if more than one (1) series is to be issued in a particular year, by alphabetical designation.~~

~~(b) Each series of bonds shall have such date as the Arkansas Development Finance Authority shall determine and shall mature or be subject to mandatory sinking fund redemption as determined by the authority over a period ending not later than thirty (30) years after the date of issuing the bonds of each series.~~

~~(c) Pending the issuance of bonds, the authority may issue temporary notes maturing not more than five (5) years after the date of issuance to be exchanged for or paid from the proceeds of bonds at such time as the bonds may be issued.~~

~~(d)(1) Each series of the bonds shall bear interest at the rate or rates accepted by the authority. The bonds may bear interest at either a fixed or variable rate or may be convertible from one interest rate mode to another.~~

~~(2) Interest shall be payable at such times as the authority shall determine, including the use of zero coupon or capital appreciation bonds.~~

~~(c) As determined by the authority, the bonds may:~~

~~(1) Be issued in the form of a bond registered as to principal and interest without coupons;~~

~~(2) Be in the denominations;~~

~~(3) Be made exchangeable for bonds of another form or denomination bearing the same rate of interest and date of maturity;~~

~~(4) Be made payable at the places within or without the state;~~

~~(5) Be made subject to redemption prior to maturity in the manner and for redemption prices; and~~

~~(6) Contain other terms and conditions.~~

~~(f) The bonds shall have all of the qualities of negotiable instruments or securities under the laws of this state, subject to the provision for registration of ownership.~~

~~15-4-3110. Authorization of bonds.~~

~~(a)(1) Prior to the issuance of any series of bonds, the Arkansas Development Finance Authority shall adopt a resolution authorizing the issuance of the bonds.~~

~~(2) Each resolution may contain terms, covenants, and conditions as deemed desirable, including, without limitation, those pertaining to:~~

~~(A) The establishment and maintenance of funds and accounts;~~

~~(B) The deposit and investment of revenues and of bond~~

proceeds; and

~~(C) The rights and obligations of the state, its officers and officials, the authority, and the registered owners of the bonds.~~

~~(3)(A) The resolution of the authority may provide for the execution and delivery by the authority of a trust indenture or indentures, which may be a master trust indenture, series indenture, supplemental indenture, or any other form of indenture deemed necessary by the authority, with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions referred to in this subchapter or as otherwise authorized by law.~~

~~(B) The trust indenture or indentures shall be binding upon the state and its agencies, officers, and officials to the extent set forth in this subchapter or as otherwise authorized by law.~~

~~(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved:~~

~~(1) To apply to the payment of debt service on the bonds issued or secured under Amendment 82 and this subchapter all, any part, or none of the revenues that may be derived from any qualified Amendment 82 project financed by the bonds or financed by the authority in some other manner; and~~

~~(2) At the option of the authority and to the extent of the revenues that the authority elects to apply to debt service, to release from any requirement of the resolution or trust indenture other revenues and resources of the state.~~

~~(c) Any resolution or trust indenture adopted or executed under this section may provide for the retirement and defeasance of the bonds by the depositing of cash or investments in trust to be maintained for the purpose of retirement and defeasance of the bonds. When the provision of the resolution or trust indenture are complied with, the bonds being defeased shall not be deemed to be outstanding bonded indebtedness for the purposes of this subchapter.~~

~~15-4-3111. Form and delivery of bonds.~~

~~(a) Each bond shall:~~

~~(1) Be signed with the manual or facsimile signatures of the Governor, the Chair of the Board of Directors of the Arkansas Development Finance Authority, and the Treasurer of State; and~~

~~(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.~~

~~(b) Delivery of the bonds shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.~~

~~15-4-3112. Sale and price of bonds.~~

~~(a) The bonds may be sold in the manner, either at public or private sale, and upon terms as determined by the Arkansas Development Finance Authority to be reasonable and expedient for effectuating the purposes of Amendment 82 and this subchapter.~~

~~(b) The bonds may be sold at the price the authority determines acceptable, including sale at a discount or a premium.~~

~~(c) If the bonds are to be sold at public sale, the authority 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. The authority shall set the terms and conditions of bidding, including~~

~~the basis on which the winning bid will be selected.~~

~~(d) The authority may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.~~

~~(e)(1) The authority may structure the sale of bonds using financing techniques recommended by its underwriters or other professional advisors in order to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of Amendment 82 and this subchapter.~~

~~(2)(A) In furtherance of this authorization, the authority may enter into ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable.~~

~~(B) Ancillary agreements may include, without limitation, bond purchase agreements, remarketing agreements, letters of credit, or reimbursement agreements.~~

~~(3) The authority may also enter into interest rate exchange agreements or similar agreements or contracts with any person on a competitive or negotiated basis under terms or conditions determined by the authority, but in compliance with § 15-5-317.~~

~~(f) After funding any necessary reserve or reserves, the proceeds from the sale of the bonds may be used to pay:~~

- ~~(1) The fees of any trustee or paying agent;~~
- ~~(2) The costs of publication of notices;~~
- ~~(3) The costs of the printing of the bonds;~~
- ~~(4) The costs of publication and printing of official statements and other documents relating to the sale of the bonds;~~
- ~~(5) The fees of any nationally recognized rating agency;~~
- ~~(6) The fees of the issuer;~~
- ~~(7) The fees of the guarantor;~~
- ~~(8) Project costs; and~~
- ~~(9) Other reasonable costs incurred by the authority for issuing and selling the bonds.~~

~~15-4-3113. Deposit of bond proceeds.~~

~~(a) The proceeds from the sale of the bonds, together with any revenues derived by the authority from a qualified Amendment 82 project financed or refinanced under Amendment 82 and this subchapter that are required to be so deposited under the resolution or trust indenture authorizing or securing the bonds, shall be deposited by the recipient, as received, into trust funds in the name of the Arkansas Development Finance Authority under the resolution or trust indenture authorizing or securing the bonds to accomplish the purposes of Amendment 82 and this subchapter in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance or refinance the qualified Amendment 82 project.~~

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

~~(2) In addition and under the resolution or trust indenture authorizing or securing the bonds, there may be created other funds, accounts, or subaccounts as the authority may determine to be necessary or desirable to accomplish the purposes of Amendment 82 and this subchapter.~~

~~(c) All procedures and methods for application of proceeds of any series of bonds to the financing or refinancing of project costs shall be developed in consultation with the Department of Economic Development and the chief fiscal officer, shall be set forth in the resolution or trust indenture authorizing or securing the bonds, and maintained as part of the records of the authority.~~

~~(d) The holder and administrator of funds, comprised in whole or in part of proceeds of bonds or disbursements from funds established under this subchapter, shall be required by appropriate provision of the resolution or trust indenture authorizing or securing the bonds issued to audit funds no less frequently than annually and to assist the authority in preparing any report related to the bonds that may be required by this subchapter or other applicable federal or state law.~~

~~(e) The proceeds from the sale of the bonds together with any revenues derived by the authority from any qualified Amendment 82 project financed or refinanced under Amendment 82 and this subchapter that are required to be so deposited under the resolution or trust indenture authorizing or securing the bonds and any money held in any funds created under or authorized by Amendment 82 or this subchapter may be invested and reinvested in accordance with the resolution or trust indenture authorizing or securing the bonds issued and shall be invested by the authority to the fullest extent practicable pending disbursement for the purposes intended in any of the following:~~

~~(1) Direct obligations of the United States, including obligations issued or held in book entry form on the books of the United States Department of the Treasury or obligations the principal of and interest on which are unconditionally guaranteed by the United States;~~

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

~~(3) Nonfull faith and credit senior debt obligations issued or guaranteed by United States government agencies;~~

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

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

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

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

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

~~(7) Bonds or notes issued by this state, any municipality, county, or school district in this state or by any agency or instrumentality thereof;~~

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

~~(9) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the holder of the trust~~

~~funds and the transfer of cash from the holder of the trust funds to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the holder of the trust funds in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:~~

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

~~(i) Dealers with at least one hundred million dollars (\$100,000,000) in capital; or~~

~~(ii) Banks whose deposits are insured by the Federal Deposit Insurance Corporation; and~~

~~(B) The written repurchase agreement contract must include the following:~~

~~(i) Securities that are acceptable for transfer are those listed in subdivisions (c)(1)-(3) of this section;~~

~~(ii) The term of the repurchase agreement may not exceed thirty (30) calendar days;~~

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

~~(iv)(a) The securities must be valued weekly, marked to market at current market price plus accrued interest.~~

~~(b)(1) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the holder of the trust funds to the dealer bank or security firm under the repurchase agreement plus accrued interest.~~

~~(2) If the value of securities held as collateral declines below one hundred three percent (103%) of the value of the cash transferred by the holder of the trust funds, then additional cash or acceptable securities, or both, must be transferred and held by the holder of the trust funds; and~~

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

~~15-4-3114. General obligation bonds.~~

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

~~(b) The bonds shall be payable from gross general revenues or special revenues, which shall be appropriated by the General Assembly for such purpose, and such amount of gross general revenues or, if applicable, special revenues as may be necessary are pledged to the payment of debt service on the bonds and shall be and remain pledged for those purposes. In addition, each authorizing resolution or trust indenture may pledge all, a portion, or none of the revenues generated by any qualified Amendment 82 project as additional security for the bonds.~~

~~15-4-3115. Annual determination of moneys required for bond repayment.~~

~~(a)(1) On or before commencement of each fiscal year, the chief fiscal officer shall determine the estimated amount required for payment of all or a part of the debt service on the outstanding bonded indebtedness during the fiscal year and deduct therefrom the estimated moneys to be available from~~

~~special revenues or to the Arkansas Development Finance Authority from other sources related to the qualified Amendment 82 project to determine what amount of gross general revenues, if any, will be required.~~

~~(2) The chief fiscal officer shall certify the estimated amount to the Treasurer of State.~~

~~(3) The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the appropriate trust fund of the amount of gross general revenues or, if applicable, special revenues as shall be required to pay the maturing debt service on the outstanding bonded indebtedness.~~

~~(b)(1) The obligation to make monthly transfers of general revenues from the State Apportionment Fund to the appropriate trust fund shall constitute a first charge against the gross general revenues prior to all other uses to which the general revenues are devoted, either under present law or under any laws that may be enacted in the future.~~

~~(2) To the extent other general obligation bonds of the state may have been issued or may subsequently be issued, they shall rank on a parity of security with respect to payment from general revenues.~~

~~(c) The resolution or trust indenture authorizing or securing the bonds issued shall identify the fund to which moneys shall be credited and used for the purposes identified in § 15-4-3108(b), and for those purposes the holder of the trust funds is designated as the disbursing officer to administer those funds in accordance with Amendment 82 and this subchapter.~~

~~(d) Moneys held in trust funds in excess of the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of reserve funds, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the resolution or trust indenture authorizing or securing the bonds.~~

~~15-4-3116. Exemption from taxes.~~

~~(a) All bonds issued under Amendment 82 and this subchapter and interest on the bonds are exempt from all state and local taxes.~~

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

~~15-4-3117. Refunding bonds.~~

~~(a) After bonds have been issued under Amendment 82 and this subchapter, the Arkansas Development Finance Authority may issue bonds for the purpose of refunding any outstanding bonds issued under Amendment 82 and this subchapter.~~

~~(b) The refunding bonds shall be general obligations of the state and shall be secured and sold in accordance with the provisions of this subchapter.~~

~~(c) The proceeds of the refunding bonds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded as shall be specified by the authority in the resolution or trust indenture authorizing or securing the refunding bonds.~~

~~(d) The resolution or trust indenture under which the refunding bonds are issued may provide that any refunding bonds shall have the same security~~

~~for payment as provided for the bonds being refunded. Other than approval of the resolution or trust indenture under which refunding bonds are issued by appropriate action of the authority, no additional action or approval for the issuance of refunding bonds shall be required to be taken by the General Assembly, the Department of Economic Development, or the chief fiscal officer under this subchapter or as otherwise may be provided by other law.~~

~~15-4-3118. Contractual obligations of state — Enforcement.~~

~~(a) This subchapter shall constitute a contract between the state and the registered owners of all bonds issued under Amendment 82 and this subchapter that shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer.~~

~~(b)(1) In any suit for impairment or violation of contract with regard to bonds issued under Amendment 82 and this subchapter brought against the Arkansas Development Finance Authority, the Treasurer of State, or other appropriate agency, officer, or official of the state, the courts shall prevent a diversion of any revenues pledged and shall compel the restoration of diverted revenues by injunction or mandamus.~~

~~(2) Without limitation as to any other appropriate remedy at law or in equity, any bondholder, by an appropriate action, including, without limitation, injunction or mandamus, may compel the performance under this subchapter of all covenants and obligations of the state and its officers and officials.~~

~~15-4-3119. No rights until first series of bonds sold and delivered — Outstanding bonds unaffected.~~

~~(a) This subchapter shall not create any right of any character, and no right of any character shall arise under it unless and until the first series of bonds authorized by this subchapter are sold and delivered.~~

~~(b) The issuance of bonds authorized by this subchapter shall not impair or affect any outstanding bonds of the Arkansas Development Finance Authority issued under prior acts.~~

~~15-4-3120. Legal actions heard as preferred cause — Appeals.~~

~~Any case involving the validity of this subchapter or involving the bonds issued under Amendment 82 and this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in the cases must be taken within thirty (30) calendar days after rendition of the judgment or decree.~~

~~15-4-3121. Monitoring and reporting.~~

~~(a) The Department of Economic Development shall require audits of all accounts related to construction, operation, or maintenance of any qualified Amendment 82 project funded by this subchapter.~~

~~(b) The department shall be responsible for monitoring and reporting to the Arkansas Development Finance Authority, the Governor, and the General Assembly on the ongoing economic impact of the project and the sponsor's progress in meeting economic development investment requirements under Amendment 82 and this subchapter.~~

~~(c) The department and the authority, as applicable, shall require the sponsor to comply with all reporting and auditing requirements of the~~

~~Securities and Exchange Commission or other state or federal regulatory agency that may have jurisdiction over the sponsor.~~

~~15-4-3122. Release of information.~~

~~(a)(1) Except as otherwise required to be disclosed under this subchapter, all information that is of the type identified in § 25-19-105(b)(9)(A) and that is related to a proposed project or a qualified Amendment 82 project that is provided to, compiled by or for, or developed by or for the Department of Economic Development, the Arkansas Development Finance Authority, the chief fiscal officer, a local entity, the Governor, or the Office of Economic and Tax Policy in furtherance of their powers, duties, and obligations under this subchapter is awarded the privileges and entitled to the exclusions set forth in subsection (b) of this section."~~

~~(2) Subsection (a)(1) of this section shall not apply to information that is:~~

~~(A) Generated, compiled, or developed by a local entity that is not an agency or instrumentality of the state;~~

~~(B) Noncompetitive and nonproprietary; and~~

~~(C) Not provided to the department under its powers, duties, and obligations set forth in this subchapter.~~

~~(b) The information described in subsection (a)(1) of this section is not open to inspection and copying by any citizen of the State of Arkansas and is specifically exempt from the requirements of § 25-19-105(a) regardless of whether such information is in the custody of the department, the authority, the chief fiscal officer, a local entity, or the Governor.~~

~~15-4-3123. Power and duties of the Department of Economic Development and the Arkansas Development Finance Authority.~~

~~(a) In connection with their duties and powers under this subchapter, the Department of Economic Development and the Arkansas Development Finance Authority, acting independently or jointly, shall have the following powers and duties in addition to and not in replacement or limitation of powers conferred under other laws, to:~~

~~(1) Provide loans to a sponsor for payment of project costs;~~

~~(2) Develop or cause to be developed with proceeds of the Amendment 82 bonds, leases as lessee or lessor, in any manner acquire, own, hold, maintain, operate, sell, dispose of, exchange, mortgage, or lend, on behalf of the state, with respect to all of any part of any qualified Amendment 82 project;~~

~~(3) In any manner, acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, or dispose of franchises, rights, privileges, licenses, rights of way, and easements that are necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in Amendment 82 and this subchapter;~~

~~(4) Sell, convey, mortgage, pledge, lease as lessor, or otherwise dispose of all or any part of any qualified Amendment 82 project or other properties that it owns or leases, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights of way, and easements;~~

~~(5) Have and exercise the right of eminent domain for the purpose of acquiring lands, the fee title thereto or any easement, right-of-way, or other interest or estate therein, for a qualified Amendment 82~~

~~project, the infrastructure needs or other needs therefore or portions thereof, by the procedure now provided for condemnation by railroads in §§ 18 15 1201— 18 15 1207;~~

~~(6) Make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights of way, easements, or other property, real or personal or mixed;~~

~~(7) Enter into any contract necessary or convenient for the exercise of the powers or implementation of the purposes set forth in Amendment 82 and this subchapter;~~

~~(8) Fix, regulate, and collect rates, fees, rents, or other charges for the use of any properties or services furnished or delivered by the department and the authority;~~

~~(9) Require audits or other periodic reports of any or all accounts related to construction, operation, or maintenance of any infrastructure or other needs funded by Amendment 82 and this subchapter;~~

~~(10) Take reasonable actions to ensure that debt service requirements are met; and~~

~~(11) Take such other action as may be appropriate to accomplish the purpose of Amendment 82 and this subchapter.~~

~~(b) The department and the authority may promulgate rules with respect to their powers and duties under Amendment 82 and this subchapter.~~

~~(c) No member, officer, director, or employee of department or the authority shall be liable personally for any reason arising from the issuance of bonds under Amendment 82 and this subchapter unless such person acted with corrupt intent.~~

~~15 4 3124. Public reporting requirements.~~

~~(a) The reports delivered to the General Assembly under § 15 4 3103(i)(2) and (i)(3) shall be available to the general public under the same policies and procedures that generally apply with respect to reports to the General Assembly.~~

~~(b)(1) During the term of an Amendment 82 agreement, the Department of Economic Development shall provide a report to the Legislative Council, no less frequently than annually, with respect to the status of the applicable qualified Amendment 82 project which details the sponsor's compliance with the provisions of the Amendment 82 agreement.~~

~~(2) The department's report shall address, at a minimum:~~

~~(A) A description of the infrastructure needs and other needs provided by the state under Amendment 82 and this subchapter and costs associated with each item;~~

~~(B) A description of how the sponsor has satisfied the investment and job creation requirements of the Amendment 82 agreement, including performance benchmarks and economic goals as specifically defined in the Amendment 82 agreement;~~

~~(C) The number of jobs created by each qualified Amendment 82 project and average hourly wages for each project;~~

~~(E) A description of the benefits package, including, without limitation, health and retirement benefits received by hourly employees;~~

~~(F) A comparison of the total number of new jobs and annual payroll by the sponsor pertaining to the qualified Amendment 82 project on the date the Amendment 82 agreement was executed and the end date~~

~~of the calendar year before the filing of this report; and~~

~~(C) The application of any penalties for failure of the sponsor to satisfy its commitments under an Amendment 82 agreement.~~

~~(c) At the end of a ten (10) year period following the beginning of operation of the Amendment 82 project, the General Assembly may request a third party cost-benefit analysis to accurately determine the total project costs and the total benefits received by the state from the qualified Amendment 82 project.~~

~~(d) While Amendment 82 bonds are outstanding, the Arkansas Development Finance Authority shall provide a report to the Legislative Council, no less frequently than annually, with respect to the status of the Amendment 82 bonds. The report shall contain the information required by § 19-9-502.~~

~~(e) During the term of an Amendment 82 agreement, the chief fiscal officer shall provide a report to the Legislative Council, no less frequently than annually, with respect to the dates and costs of all economic incentives received by each qualified Amendment 82 project except as restricted by law.~~

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the act of the 2005 regular legislative session that was introduced as Senate Bill 507 does not reflect the intent of Amendment 82 to the Arkansas Constitution and that its provisions should be immediately repealed. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

The Amendment was read _____
By: Representative Thyer
BBC/BBC - 04-08-2005 10:22
BBC465

Chief Clerk