

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2585

"AN ACT TO ESTABLISH THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY
RAILROAD FINANCING ACT."

Amendment No. 1 to House Bill No. 2585.

Amend House Bill No. 2585 as originally introduced:

Page 1, line 30, add the following:

"15-5-1402. Purpose.

The Federal Railroad Administration, under Section 7203 of the Transportation Equity Act for the 21st Century, is authorized to make direct loans to small railroads to finance railroad rehabilitation and improvement projects. Under the Federal Railroad Administration regulations to implement the Railroad Rehabilitation and Improvements Financing program, any small railroads applying for federal loans are required to pay a credit risk premium for the privilege of receiving a loan under this program. The credit risk premium can be paid by the railroad or by an infrastructure partner of the project. The payment of the credit risk premium must be made before the loan moneys can be disbursed and are not part of the loan amount. With this in mind, the Arkansas General Assembly finds that the small railroads in Arkansas may not be able to raise the amount of money needed to pay the credit risk premium to participate in this program; that these small railroads are not then able to access badly needed capital financing for railroad improvements; and that therefore a state program is needed to assist these small railroads with funding of the credit risk premiums.

15-5-1403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Board" means the Board of Directors of the Arkansas Development

Finance Authority;

(3) "Credit risk premium" means that portion of the total subsidy cost to the federal government of a direct loan or loan guarantee that is not covered by federal appropriations and which must be paid by a railroad or its non-federal infrastructure partner before that direct federal loan can be disbursed or loan guarantee can be issued by the Federal Railroad

* **VVF236** *

The Amendment was read _____

By: Representative Carson

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Chief Clerk

Administration under the Railroad Rehabilitation and Improvement Financing program.

(4) "Credit risk premium loan" means a direct loan by the Arkansas Development Finance Authority from the fund for the payment of the credit risk premium by the railroad or an infrastructure partner made in accordance with this subchapter;

(5) "Fund" means the fund created under this subchapter for the purpose of making direct loans and grants by authority to railroads, the Arkansas Railroad Credit Risk Premium Revolving Loan Fund;

(6) "Infrastructure partner" means any state or local government, government sponsored authority or corporation, railroad, or group of two or more entities, at least one of which is a railroad, participating in a joint venture, who supplies or is the source of the credit risk premium which must be paid to the Federal Railroad Administration in lieu of, or in combination with, an appropriation in connection with federal financial assistance provided to the railroad for a railroad rehabilitation and improvement financing project;

(7) "Qualified borrower" means an applicant that has been approved for, and has received, a credit risk premium loan under this subchapter.

(8) "Railroad" means a rail carrier subject to Part A of Subtitle IV of Title 49, United States Code.

(9) "Railroad rehabilitation and improvement financing project" means the project for which proceeds of a Federal Railroad Administration loan are utilized which includes financial assistance solely to:

(A) Acquire, improve, or rehabilitate intermodal or rail freight or passenger equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(B) Refinance outstanding debt incurred for purposes described in subdivision (9)(A) of this section; or

(C) Develop or establish new intermodal or railroad facilities;

(10) "State" means the State of Arkansas.

15-5-1404. Duty of the authority.

(a) The Arkansas Development Finance Authority, in addition to all the duties and functions defined in the Arkansas Development Finance Authority Act, §§ 15-5-101 - 15-5-106, 15-5-201 - 15-5-211, 15-5-213, and 15-5-301 - 15-5-316, is empowered to approve or deny by majority vote of the Board of Directors of the Arkansas Development Finance Authority the applications for the loans to pay credit risk premiums for qualified borrowers.

(b) If funds are available, the authority may make grants to railroads which may not qualify for repayment of a credit risk premium loan.

15-5-1405. Loans - Conditions.

Loans for credit risk premiums may be made when:

(1) The Arkansas Development Finance Authority deems the making of a loan to be in the best interest of the economic development of the State of Arkansas;

(2) The railroad is found to be financially responsible and demonstrates that sufficient income may be reasonably expected to be available to pay the payments on the loan and the normal operating expenses of the business; and

(3) The credit risk premium loan does not exceed ten (10) years in

Length of payback term.

15-5-1406. Evaluation of railroads.

(a) The Arkansas Development Finance Authority shall promulgate standards and regulations for the evaluation of the financial condition and business history of the railroads and may require the attachment to each application for a loan under this subchapter of a financial report and evaluation by an independent certified public accounting firm in addition to the examination and evaluation as the authority may make in determining whether the railroad meets prescribed minimum standards and qualifications before entering into any loan under this subchapter.

(b) The authority shall also be empowered to promulgate rules and regulations for the handling of disbursements from and payments to the Arkansas Railroad Credit Risk Premium Revolving Loan Fund and for the management and implementation of programs provided in this subchapter.

15-5-1407. Applications - Supporting documents.

Each railroad requesting a credit risk premium loan shall submit to the Arkansas Development Finance Authority an application, supporting documents, and instruments as may be required by the rules and regulations promulgated by the authority pursuant to this subchapter and approved by a majority vote of the Board of Directors of the Arkansas Development Finance Authority.

15-5-1408. Applications - Review - Confidentiality and public disclosure - Notice.

(a) All applications filed with the Arkansas Development Finance Authority under the provisions of this subchapter shall first be reviewed by the appropriate designated staff officials of the authority for preliminary review and recommendation prior to being submitted for consideration by the authority.

(b) All applications submitted to the authority and all supporting documents, instruments, proposed contracts, estimated costs, or other evidence submitted therewith shall be confidential and shall not be open to public review except as provided in this subchapter, and all staff meetings for the purpose of giving preliminary review of the applications shall be confidential and shall not be open to the public.

(c) Upon conclusion of the preliminary review, if the request is submitted to the authority with a recommendation that it be approved, the application and all supporting documents, including the findings and the recommendations resulting from the staff shall be an open public record available for inspection during all regular business hours.

(d) In the event that an application from a railroad is not recommended for approval by the authority hereunder, that application and all supporting documents, including all findings and recommendations by the staff, shall continue to be confidential and not open to public inspection.

(e) The railroad shall be notified in writing of any staff determination that the application is not being submitted to the authority with a recommendation that it be approved, which notice shall advise the railroad that the application will be kept confidential unless the railroad shall, within thirty (30) days from the date of receipt of the written notice, file a petition with the authority requesting that the authority hold a hearing in regard to the application, in which event the application and

all supporting documents shall become public information available for public inspection.

15-5-1409. Disposition of funds.

(a) All revenues derived from the levying of the Arkansas Gross Receipts Tax, as amended, § 26-52-101 et seq., upon motor fuel used by railroad locomotives shall be remitted and reported to the Director of the Department of Finance and Administration in a manner and on forms as he shall direct.

(b) The tax proceeds shall be declared to constitute cash funds restricted in their use and dedicated to be used solely as authorized in § 15-5-1410.

(c) The cash funds as received by the Department of Finance and Administration shall not be deposited in or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision. The department shall pay the cash funds to the Arkansas Development Finance Authority for depositing those amounts in the Arkansas Railroad Credit Risk Premium Revolving Loan Fund for the purposes authorized by § 15-5-1410.

(d) The authority shall administer the funds so deposited and shall use the funds for the purposes of loan assistance to railroads for credit risk premiums on railroad rehabilitation and improvement financing projects and for grants to railroads for payment of credit risk premiums if they do not qualify for repayment of a loan.

15-5-1410. Arkansas Railroad Credit Risk Premium Revolving Loan Fund.

(a) There is established a cash fund account of the Arkansas Development Finance Authority to be known as the "Arkansas Railroad Credit Risk Premium Revolving Loan Fund". This cash fund account is to be maintained in one (1) or more financial institutions of the state and shall be administered in accordance with this subchapter.

(b) The authority is authorized to accept moneys for the Arkansas Railroad Credit Risk Premium Revolving Loan Fund from any source, including, but not limited to, funds from the Department of Finance and Administration as provided in § 15-5-1409.

(c) The fund shall be a continuing fund, not subject to fiscal year limitations, and shall be used for loans for the payment of credit risk premiums for railroad rehabilitation and improvements in this state and as provided in subsection (d) of this section.

(d) Any interest at the end of the fiscal year which exceeds the amount necessary to cover loan defaults occurring during that fiscal year, shall be made available for nonrefundable grants to railroads for credit risk premiums in cases where private financing of the credit risk premium is unavailable and where a railroad may not qualify for repayment of a credit risk premium loan.

(e) This fund shall be administered by the Arkansas Development Finance Authority.

15-5-1411. Loan for credit risk premiums - Annual report.

(a) The Arkansas Development Finance Authority is authorized to develop and implement, with the technical assistance of the Arkansas State

Highway and Transportation Department, necessary rules and regulations to receive, review, and approve applications for loan assistance for credit risk premiums on railroad rehabilitation and improvement projects in this state.

(b) The maximum loan amount approved by the authority shall be modified as necessary to ensure adequate loan assistance is available for credit risk premiums on railroad rehabilitation and improvement projects.

(c) For loans under this subchapter, the board will give priority consideration, but not necessarily in the following order, to projects that:

(1) Enhance public safety;

(2) Enhance the environment;

(3) Promote economic development;

(4) Enable United States companies to be more competitive in international markets;

(5) Are endorsed by the plans prepared under Section 135 of Title 23, United States Code, by the state or states in which they are located; or

(6) Preserve or enhance rail or intermodal service to small communities or rural areas.

(d) The authority shall report each October to the Legislative Council on the status of the Arkansas Railroad Credit Risk Premium Revolving Loan Fund.

15-5-1412. Criteria for grant approval.

The Arkansas Development Finance Authority is authorized to develop and implement criteria for grant approval of interest moneys to be used as authorized in § 15-5-1410(d)."