

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1927

By: Representative Mahony

"AN ACT TO AMEND SECTIONS 9 AND 10 OF ACT 439 OF 1961, AS AMENDED [ARK. STAT. 21-1509 AND 21-1510] AND TO ADD NEW SECTION 18 TO ACT 439 OF 1961, AS AMENDED, RELATING TO THE METROPOLITAN PORT AUTHORITY ACT OF 1961; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 9 of Act 439 of 1961, as amended, the same being Arkansas Statutes 21-1509, is hereby amended to read as follows:

"Section 9. (a) Port authorities are hereby authorized and empowered to enter into the necessary contracts for the borrowing of funds, pursuant to the provisions of this Act, which they may determine will be required to carry out the powers of port authorities and to carry out the purposes of this Act. In this regard, port authorities are authorized and empowered to issue bonds and to use the proceeds thereof for the carrying out of the powers of port authorities and the accomplishment of the purposes of this Act, either alone or together with other available funds and revenues. Bonds may be issued from time to time for the acquisition, construction and equipment of facilities, and the reconstructing, extending, improving, equipping or re-equipping of facilities. There may be separate issues involving different facilities and there may be successive issues involving the same facilities. Each issue shall be in the principal amount sufficient, together with other available funds, for the acquisition, construction and equipment of facilities or the reconstruction, extension, improvement, equipment or re-equipment of facilities, all costs of issuing bonds, the amount necessary for a reserve, if deemed desirable by the port authority issuing the bonds, the amount necessary to provide for debt service on the bonds until revenues for the payment thereof are available, and any cost of whatever nature necessarily incidental

thereto.

(b) Each issue of bonds shall be authorized by resolution of the port authority issuing the bonds. The bonds may be coupon bonds payable to bearer, may be registered as to principal or as to principal and interest, or may be coupon bonds subject to registration as to principal or as to principal and interest, may be in one or more series, may bear such date or dates, may mature at such time or times, not exceeding thirty-five (35) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption, and may contain such terms, covenants and conditions as the authorizing resolution may provide, including without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties and obligations of the port authority issuing the bonds and of the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds. Priority, between and among successive issues, of the pledge of revenues and mortgage lien may be controlled by the resolutions authorizing the issuance of bonds hereunder. Bonds issued hereunder shall have all of the qualities of negotiable instruments under the negotiable instruments laws of the State of Arkansas, subject to the provisions hereof pertaining to registration.

(c) Each resolution of a port authority authorizing the issuance of bonds may provide for the execution of an indenture defining the rights of the holders and registered owners of the bonds and providing for the appointment of a trustee for the holders and registered owners of the bonds. The indenture may control the priority, between and among successive issues, of the pledge of revenues and mortgage lien, and may control any other terms, covenants and conditions that are deemed desirable, including without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties and obligations of the port authority and the trustee for the holders and registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(d) Bonds issued hereunder may be sold for such price, including without limitation sale at a discount, and in such manner as the port authority issuing the bonds may determine by resolution. Bonds issued hereunder may be sold with the privilege of conversion to an issue bearing a lower rate or rates of interest, upon such terms that the port authority issuing the bonds receive no less and pay no more than it would receive and pay if the bonds were not converted, and the conversion shall be subject to the approval of the port authority issuing the bonds.

(e) Bonds issued hereunder may be executed by the facsimile signature of the Chairman of the port authority issuing the bonds and by the manual signature of the Secretary of the port authority issuing the bonds, and sealed with the seal of the port authority issuing the bonds, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds or coupons, such signatures shall nevertheless be valid and sufficient for all purposes. The coupons attached to the bonds may be executed by the facsimile signature of the Chairman of the port authority issuing the bonds.

(f) The resolution or indenture referred to in this Section 9 may, but need not impose a foreclosable mortgage lien upon the facilities acquired, constructed, reconstructed, extended, equipped or improved, in whole or in part, with the proceeds of bonds issued under this Act, and the nature and extent of such mortgage lien may be controlled by the resolution or indenture including, without limitation, provisions pertaining to the release of all or part of the land, buildings, and/or facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by this Act. The resolution or indenture authorizing and/or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this Act, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, to compel the performance of the duties of the officials of the port authority set forth in this Act and set forth in the resolution or indenture authorizing and/or securing the bonds. References in this Act to mortgage lien shall include, and mean, security interest in any personal property embodied in the facilities acquired, constructed, reconstructed, extended, equipped or improved, in whole or in part, with the proceeds of bonds issued under this Act.

(g) In the event of a default in the payment of the principal of or interest on any bonds issued under this Act, any court having jurisdiction may appoint a receiver to take charge of the land, buildings and/or facilities upon which there is a mortgage lien securing such bonds. The receiver shall have the power to operate and maintain the land, buildings and/or facilities and to charge and collect rates and/or rents with reference thereto sufficient to provide for the payment of the principal of and interest on bonds, after providing for the payment of any costs of receivership and operating expenses of said land, buildings and/or facilities, and to apply the income and revenues derived therefrom in conformity with this Act and the resolution or indenture authorizing and/or securing such bonds. When the default has been cured, the receivership shall be ended and the properties returned to the port authority issuing the bonds. The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or indenture authorizing and/or securing the bonds, and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, the mortgage lien on, said land, buildings, and/or facilities as specified in and fixed by the resolution or indenture authorizing and/or securing successive bond issues."

SECTION 2. Section 10 of Act 439 of 1961, as amended, the same being Arkansas Statutes 21-1510, is hereby amended to read as follows:

"Section 10. The principal of, interest on, and trustee's and paying agent's fees in connection with each issue of bonds issued by a port authority under this Act shall be secured by a pledge of and shall be payable from the revenues derived from the lands, buildings, and/or facilities acquired, constructed, reconstructed, extended, improved or equipped in whole or in part, with the proceeds of the bonds of the particular issue. In addition, the port authority issuing the bonds is authorized to pledge to and use for the payment of the principal of, interest on and paying agent's fees in connection with a particular issue of bonds, revenues derived from other lands, buildings and/or facilities owned or held by the port authority. The port authority issuing the bonds may, by the resolution and/or indenture, among other things, control the subsequent issuance of additional bonds and the priority, between and among issues, of the pledge of revenues and of the

mortgage lien, provide for the use of surplus pledged revenues, and provide for the creation of special trust funds to be maintained in such banks as the port authority issuing the bonds may select. The moneys in such special trust funds shall be secured and disbursed as determined by the port authority. Such special trust funds may, without limitation, include a bond fund, a depreciation fund, an operation and maintenance fund, and such reserve funds as the port authority issuing the bonds may determine to be in the best interests of the port authority in accomplishing the purposes of this Act. It shall be plainly stated on the face of each bond issued under this Act that the same has been issued under the provisions of this Act, and bonds issued hereunder shall be general obligations only of the port authority issuing the bonds, and in no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or the faith and credit of any municipality or county or other political subdivision of the State of Arkansas or any of their revenues are pledged. No member of any port authority shall be personally liable on the bonds, or for any damages sustained by any one in connection with the contracts with the holders and registered owners of the bonds or the construction, reconstruction, extension, improvement or equipment of buildings and/or facilities unless such member shall have acted with a corrupt intent. All covenants and agreements entered into and made by a port authority shall be binding in all respects on the port authority and the members thereof and their successors from time to time in accordance with the terms of such covenants and agreements, and all of the provisions thereof shall be enforceable by mandamus or other appropriate proceedings at law or in equity. This Act shall be the sole authority required for the issuance of bonds thereunder and for the exercise of the powers of port authorities established under this Act, and it shall not be necessary for the municipalities and counties represented on the boards of directors of port authorities to take any action authorizing or approving the issuance of bonds or the exercise of any other powers by port authorities."

SECTION 3. Act 439 of 1961, as amended, is hereby amended by adding thereto the following Section 18:

"Section 18. Wherever used or referred to in this Act unless a different meaning clearly appears from the context: (a) "County" means a county of this State, or where a county is divided in two [2] districts, the term "county"

shall mean the entire county or either district of such county.

(b) "County Court" means the quorum court after the quorum court is constituted and acting as the county court under Amendment No. 55 to the Constitution of the State of Arkansas, or, until such quorum court is so constituted and acting, the county judge sitting as the county court.

(c) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the port authority shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this act.

(d) "Governing body" means the council, board of directors or city commission of any municipality.

(e) "Municipality" means a city of the first or second class or an incorporated town.

(f) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings and personal property of every kind.

(g) "Sell" means to sell for such price, in such manner and upon such terms as the port authority shall determine, including, without limiting the generality of the foregoing, private or public sale, and if public pursuant to such advertisement as the port authority shall determine, sale for cash or credit payable in lump sum or in installments, over such period as the port authority shall determine, and if on credit with or without interest and at such rate or rates as the port authority shall determine.

(h) "Lease" means to lease for such rentals, for such period or periods and upon such terms and conditions as the port authority shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such period or periods and upon such terms and conditions as the port authority shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the port authority shall determine.

(i) "Facilities" or "properties" or "property" means any real property, personal property or mixed property, of any and every kind that can be used or

that will be useful in carrying out any of the purposes of this Act.

(j) "Acquire" means to obtain at any time hereafter by gift, purchase, or other arrangement, any project or any portion of a project, whether theretofore constructed and equipped, theretofore partially constructed and equipped, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the port authorities shall determine.

(k) "Person" means any natural person, partnership, corporation association, organization, business trust, and public or private person or entity.

(l) "Port Authority" or "port authorities" means a port authority or port authorities established pursuant to the provisions of this Act."

SECTION 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. The provisions of this Act are hereby declared to be severable. If any provision should be held to be invalid or inapplicable to any person or circumstance, such holding shall not affect the validity or applicability of the remainder of the provisions hereof.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR-86-31, a question has arisen over the validity of Act 1232 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

