

State of Arkansas

76th General Assembly

Regular Session, 1987 As engrossed 3-11-87

SENATE BILL 435

By: Senators Gibson and Bradford

As engrossed 3-3-87 As engrossed 3-5-87 As engrossed 3-18-87

As engrossed 3-24-87

"AN ACT TO AMEND ACT 1062 OF 1985, AS AMENDED [ARK. STAT. 13-2901 ET SEQ.], TO AUTHORIZE THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO PROVIDE FINANCIAL AID AND ASSISTANCE TO EDUCATIONAL INSTITUTIONS; TO AUTHORIZE THE CREATION OF NON-PROFIT CORPORATIONS; TO ELIMINATE CERTAIN NOTICES IN CONNECTION WITH POOLED FINANCINGS; TO PERMIT THE ISSUANCE OF BONDS DENOMINATED IN CURRENCIES OTHER THAN THE CURRENCY OF THE UNITED STATES OF AMERICA; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. That Section 2.00 of Act 1062 of 1985, as amended, the same being Section 13-2902 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 2.00. The General Assembly hereby finds:

(a) That there exists severe economic instability in traditional national and international markets for goods and services produced by the citizens of the State of Arkansas. This instability has caused serious economic distress among the citizens of our State and is manifest in the increasing number of business failures and bankruptcies, both personal and corporate, and the extraordinarily high levels of unemployment in agricultural business and industrial enterprises; in the rapidly rising costs of housing for elderly persons and families of low and moderate income. The continued existence of these conditions is inimical to the public health, welfare, safety, morals and economic security of the citizens and inhabitants of the State.

(b) That the economic well being of the citizens of the State of Arkansas will be enhanced by the providing of economical health care facilities for the benefit of its citizens, by the providing of educational facilities of every

nature and kind by the providing of capital improvement facilities for its citizens and by the providing of financial assistance to political subdivisions of the State.

For these reasons, the General Assembly hereby finds that there exists in the State an immediate and urgent need to provide the means and methods for providing financing:

(i) to complement Arkansas' private financial institutions to better serve their customers in ways which contribute to a strengthened and diversified Arkansas economy, and which does not compete with Arkansas private financial institutions;

(ii) to restore and revitalize existing agricultural business and industrial enterprises for the purpose of retaining existing employment within the State;

(iii) to promote and develop the expansion of existing and the establishment of new agricultural business and industrial enterprises for the purpose of further alleviating unemployment within the State and for providing additional employment;

(iv) to promote and target resources of the State to further the development of export trade of Arkansas products for the purpose of the economic development of the State and for providing additional employment therefrom;

(v) to eliminate the shortage of decent, safe, sanitary and affordable residential housing for elderly persons and families of low and moderate income in the State;

(vi) to assure the development of reliable, affordable, efficient and environmentally compatible sources of energy for all types of public and private consumption;

(vii) to provide health care facilities for the citizens and inhabitants of the State;

(viii) to provide capital improvement facilities for the benefit of the citizens and inhabitants of the State;

(ix) to provide educational facilities for educational institutions within the State and to enhance the Public School Fund;

(x) to provide for short term advance funding of the obligations of local governments throughout the State; and

(xi) to assist minority business in obtaining loans or other means of financial assistance.

It is hereby declared to be the public policy and responsibility of this State to promote the health, welfare, safety, morals and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises, the elimination of the shortage of decent, safe, sanitary and affordable housing for elderly persons and persons of low and moderate income, for the development of reliable, affordable, efficient and environmentally compatible sources of energy for all types of public and private consumption, for health care facilities, for capital improvement facilities and for educational facilities for the benefit of educational institutions within the State.

The General Assembly finds that the public policies and responsibilities of the State as set forth in this Section cannot be fully attained without the use of public financing and that such public financing can best be provided by the creation of a state development finance authority with comprehensive and extensive powers therein, which authority shall have the power to issue revenue bonds to provide financing for qualified agricultural business, and industrial enterprises, residential housing, energy enterprises and facilities, health care facilities, capital improvement facilities, and educational facilities, and that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned and granted."

SECTION 2. That subsection 5.10 of Section 5.00 of Act 1062 of 1985, the same being subsection 5.10 of Section 13-2905 of the Arkansas Statutes, is hereby amended to read as follows:

"5.10. To issue Bonds to provide financing for a specific activity or particular project authorized herein or to provide on a pooled or consolidated basis financing for activities or projects authorized hereunder which shall be secured by and payable solely from the bonds, lease payments or other obligations issued by or payable to the State agencies, political subdivisions of the State or others for whose benefit the Authority may issue Bonds, and the security and sources of payments thereof. The Authority may also issue Bonds for the purpose of generating investment earnings or other income, such investment earnings or other income thereafter to be used to finance activities or projects authorized herein. Prior to the engagement of a financial institution to serve as trustee, paying agent or in any fiduciary capacity in

connection with any program, indenture or general resolution of the Authority, the Authority shall request proposals for such services and the selection of such financial institution shall be made on the basis of the response to such request which is the most economical and in the best interest of the Authority."

SECTION 3. That subsection 5.17 of Section 5.00 of Act 1062 of 1985, the same being subsection 5.17 of Section 13-2905 of the Arkansas Statutes, is hereby amended to read as follows:

"5.17. To invest moneys of the Authority, including proceeds from the sale of any Bonds, in such manner as the Board shall determine, subject to any agreement with bondholders stated in the Authorizing Resolution (hereinafter defined) providing for the issuance of Bonds."

SECTION 4. That Section 5.00 of Act 1062 of 1985, as amended, is hereby amended to add at the end of said Section two new subsections 5.27 and 5.28, to read as follows:

"5.27. To create nonprofit corporations, which shall have such purposes and powers as the Board of Directors shall determine, to assist in carrying out the purposes of this Act, and to provide technical, administrative and financial assistance to such nonprofit corporations.

5.28. To make secured or unsecured loans to, or to guarantee the payment of loans made to, businesses for the purpose of financing the export of goods to foreign countries; provided that the Board of Directors shall first find that a substantial portion of the value of such goods prior to export has been or will be added in the State.

5.29. To administer the allocation of the 'state ceiling' of 'private activity bonds' as those terms are defined in the Tax Reform Act of 1985 (Pub. L. 99-514) which are subject to volume limitations under federal law, including particularly the limitations under Section 146 of the Internal Revenue Code of 1986, as amended (the 'Code')."

SECTION 5. That Section 6.00 of Act 1062 of 1985, as amended, the same being Section 13-2906 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 6.00. The Authority is hereby authorized and empowered to issue

Bonds from time to time, whether or not the interest on which is subject to Federal income taxation, either for a specific activity or for a particular project or on a pooled or consolidated basis for a series of related or unrelated activities or projects in such amounts as shall be determined by the Authority for the purpose of financing qualified agricultural business enterprises, capital improvement facilities, educational facilities, enhancing the Public School Fund, health care facilities, housing developments, industrial enterprises, exports of goods and short term advance funding of local government obligations, or any combination of such facilities, or any interest in facilities, including without limitation leasehold interests in and mortgages on such facilities. The proceeds of and earnings from the bond issues may, in amounts determined by the Authority, be deposited into the State Treasury to the credit of the Public School Fund. Provided, nothing in this Act shall be construed to authorize the Authority to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility. The Authority is authorized and empowered to use the proceeds of any bonds issues, together with any other available funds, for the making of loans, purchasing mortgages, security interests in loan participations as herein authorized and paying all incidental expenses in connection therewith, paying expenses of authorizing and issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts, and funding such reserves as the Authority deems necessary and desirable. All moneys received by the Authority, other than moneys received by virtue of an appropriation, are hereby specifically declared to be cash funds, restricted in their use and to be used solely as provided herein. No moneys of the Authority other than moneys received by appropriation shall be deposited in the State Treasury.

6.01. The Authority, when requested to do so by a State agency or a political subdivision, is hereby authorized and empowered to engage an underwriter or underwriters to facilitate the issuance and sale of bonds to accomplish the financing of a specific activity or a particular project of such State agency or political subdivision permitted to be financed hereunder (or other activities and projects for which no State agency or political subdivision is authorized by law to obtain such financing) which the Authority determines to be consistent with the purposes of this Act. In the furtherance

thereof, the Authority is also authorized and empowered to engage in connection therewith such legal counsel and other experts as may be recommended by such underwriter or underwriters.

6.02. Not less than thirty (30) days prior to the issuance of any Bonds authorized under this Act with respect to any Project or activity which is to be undertaken for the direct benefit of any person or entity which is not a State agency or a political subdivision, written notice of the intention of the Authority to provide financing and issue Bonds therefor shall be given by the president of the Authority to the mayor of the municipality in which the Project or activity is to be located, or, if the Project or activity is not proposed to be located within a municipality, such notice shall be given to the county judge of the county. No Bonds for the financing of the project or activity shall be issued by the Authority or any other political subdivision or instrumentality of the State for a one-year period if, within 15 days after the giving of such notice, the legislative body of the political subdivision in which the Project or activity is proposed to be located shall have duly enacted an ordinance or resolution stating express disapproval by the legislative body of the Project or activity and the reasons therefor. Such disapproval shall not be effective unless a certified copy of such ordinance or resolution shall have been delivered to the president of the Authority within 20 days of the giving of notice by the president as herein required. Any notice required by this Section 6.02 may be given by the mailing thereof or actual delivery thereof to the proper person, and it shall be conclusively presumed that any notice given by mail, with proper postage prepaid, has been timely received by the addressee. Provided, however, it shall not be necessary to give the notice provided for herein if the Project or activity is of such a nature that a public hearing has been held in the affected political subdivision with respect thereto and approval given in the manner required by Section 147(f) of the Internal Revenue Code of 1986. Provided, further, that this Section 6.02 shall not apply to the issuance of Bonds to provide financing on a pooled or consolidated basis for a series of related or unrelated activities or Projects where such activities or Projects have not been specifically identified prior to the issuance of the Bonds."

SECTION 6. That Section 7.00 of Act 1062 of 1985, as amended, the same being Section 13-2907 of the Arkansas Statutes, is hereby amended to read as

follows:

"Section 7.00. Bonds issued in accordance herewith shall be authorized by resolution of the Authority (the 'Authorizing Resolution'). The Bonds may be issued as registered Bonds or coupon Bonds, payable to bearer, and, if coupon Bonds, may be registrable as to principal only or as to principal and interest, and may be exchangeable for bonds of another denomination and/or in another form. The Bonds may be in such form and denominations, and may have such date or dates, may be stated to mature at such time or times, may bear interest payable at such times and at such rate or rates, may be payable at such places within or without the State, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the Authority shall determine. The Bonds shall be denominated in the currency of the United States of America, unless the Authority, in its discretion, determines that denominating the Bonds in the currency of a foreign country is in the best interests of the Authority, in which case the Bonds may be denominated in the currency of a foreign country. The Bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth above. The Authorizing Resolution may contain any other terms, covenants and conditions that the Authority deems reasonable and desirable, including without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of any security for payment of the Bonds, the custody and application of the proceeds of the Bonds, the collection and disposition of revenues, the investing for authorized purposes, and the rights, duties and obligations of the Authority and the holders and registered owners of the Bonds.

7.01. The Authorizing Resolution may provide for the execution of a trust indenture between the Authority and any financial institution within or without the State of Arkansas. The trust indenture may contain any terms, covenants and conditions that are deemed desirable by the Authority, including without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of any security for the payment of the Bonds, the custody and application of the proceeds of the Bonds, the collection and disposition of revenues, the investing and reinvesting of any moneys during periods not needed for authorized purposes, and the rights, duties and obligations of the Authority and the holders and registered owners of the Bonds.

7.02. Any Authorizing Resolution and trust indenture relating to the issuance and security of the Bonds shall constitute a contract between the Authority and holders and registered owners of the Bonds, which contract, and all covenants, agreements and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and the covenants, agreements and obligations of the Authority may be enforced by mandamus or other appropriate proceeding at law or in equity."

SECTION 7. That Section 25.00 of Act 1062 of 1985, as amended, the same being Section 13-2923 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 25.00. Except as stated in Section 23.00 hereof, it is the specific intent of this Act that the provisions hereof are supplemental to other constitutional and statutory provisions now existing or hereafter adopted which may provide for the financing of agricultural business enterprises, capital improvements, educational facilities, enhancing the Public School Fund, health care facilities, housing development, industrial enterprises or short-term advance funding of local government obligations. Nothing contained in this Act shall be deemed to be a restriction or limitation upon alternative means of financing previously available or hereafter made available to municipalities or counties for the purpose herein set forth."

SECTION 8. Section 27.00 of Act 1062 of 1985 is hereby amended to read as follows:

"Section 27.00. The aggregate of the state ceiling for the State imposed by the Code applicable to private activity bonds ('affected bonds') in calendar years 1987 and thereafter is hereby, and shall be, allocated as follows:

(a) The Authority is allocated for calendar year 1987 the following amounts for the purposes stated: \$30,000,000 for multifamily residential housing and \$75,000,000 for industrial development.

(b) The Authority is allocated for calendar year 1988, and for each year thereafter, the following amounts for the purposes stated: \$15,000,000 for multifamily residential housing, \$25,000,000 for single family residential housing, and \$50,000,000 for industrial development, provided, however, that the Authority, by Resolution of its Board of Directors, may provide that the total \$90,000,000 allocated to the Authority for calendar years 1988 and

thereafter may be redistributed among the purposes stated in amounts other than those set forth in this Section 27.00(B).

(c) The Arkansas Student Loan Authority is allocated \$15,000,000 for calendar year 1988, and for each calendar year thereafter, for bonds issued to provide student loans.

(d) To the extent any amounts allocated pursuant to subsections (a), (b), and (c) above are not used prior to October 1 in any year, such amounts shall be allocated pursuant to subsection (e) hereof.

(e) The remaining balance of the state ceiling is allocated to all other effected bonds issued by all issuers of such bonds, within the State, regardless of whether such issuers are at the state level or at the local level, pursuant to rules and regulations established by the Authority promulgated in compliance with the Administrative Procedure Act, in the amounts set forth in filings made by or on behalf of issuers.

27.01. In order to assure an allocation of the state ceiling to an issue of affected bonds prior to the issuance (by delivery and payment) of such bonds, a filing by or on behalf of the issuer must be made with the President of the Authority (the 'President') not more than forty-five (45) days prior to the issuance of such bonds. Such filing shall cease to be effective to assure allocation of a portion of the state ceiling (i) as to filings made on or before July 31 of any calendar year, unless the bonds have been issued (by delivery and payment) and written notice of such issuance has been given to the President within forty-five (45) days after the date of such filing, or (ii) as to filings made on or after August 1 of any calendar year, unless the bonds have been issued (by delivery and payment) and written notice of such issuance has been given to the President by the date which is the later of October 1 of the same calendar year, or is the later of forty-five (45) days after the date of such filing, but in no event after January 4 of the following calendar year. In the event that a filing so made expires, by reason of failure to issue the bonds or to give the required notice within the applicable period stated above, a new filing shall be made which shall be accorded priority in accordance with its new date and number.

27.02. In the event that no filing with the President has been made with respect to an issue of affected bonds prior to the issuance of such bonds, notice of issuance of such bonds on or before December 31 of any calendar year, may be filed with the President upon or after issuance of such bonds,

but not later than January 4 of the following calendar year, and such filing shall be accorded priority in accordance with its date and number.

27.03. In the event that the aggregate number of all effective filings with the President does not exhaust the State ceiling for any calendar year, the balance of the State ceiling for that calendar year is allocated to all other affected bonds issued within the State during that calendar year in the order and amounts by which they are issued (by delivery and payment), notwithstanding that no filing has been made under this Act, with respect to such bonds.

27.04. The Authority shall maintain continuous cumulative records of the filings made under this Act. For such purpose, the filings under this Act shall be dated and numbered by the President in the order made. The President shall attempt to accept filings in the order in which completed applications are received.

27.05. (a) If the aggregate number of all effective filings with the President does not exhaust the state ceiling for any calendar year, the balance of such state ceiling may be carried forward for one or more carryforward purposes if any issuer makes an irrevocable election identifying carryforward purpose(s) and the balance to be used for each carryforward purpose, by filing an election with the President on December 31 of such year, and no such filing shall be effective unless approved by the President.

(b) Carryforwards elected with respect to any purpose shall be used in order of the calendar years in which they arose. Carryforward purposes shall be those permitted by Section 146(f)(5) of the Code, as amended.

(c) Carryforwards heretofore elected with respect to any purpose pursuant to the provisions of Section 4 of the Proclamation of the Governor of the State dated November 30, 1986, for the calendar year ending December 31, 1986, are hereby ratified and confirmed.

27.06. Filings made under this Act, notice of issuance of bonds given under this Act, and carryforward elections shall be in substantially the forms established by the Authority.

27.07. The Authority may charge each issuer of affected bonds a filing fee for establishing its compliance with the Code by appropriate resolution of the Authority and may modify its filing fee from time to time by subsequent resolution of the Authority.

27.08. The President may delegate in writing functions under this Act to

other officers and employees within the Authority.

27.09. This Section shall be effective for the calendar year 1987 and thereafter. This Section may be relied upon by issuers of affected bonds, beneficiaries of the proceeds from and owners of such bonds, and other participants in the issuance of such bonds with respect to all affected bonds issued on and after January 1, 1987, notwithstanding the subsequent enactment of this Act."

SECTION 9. It is the intention of this Act to amend such portions of Act 1062 of 1985, as amended, as are specifically mentioned herein; the remainder of said Act 1062 shall remain in full force and effect as enacted until the same shall be further amended or repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly (1) that there is an urgent need to provide financial assistance to Arkansas educational institutions and that the Arkansas Development Finance Authority possesses the expertise and resources to provide such assistance; (2) that the power to create nonprofit corporations will greatly assist the Arkansas Development Finance Authority in carrying out its duties under this Act; (3) that there is an urgent need to modify the prior notification and other requirements of Section 6.02 of Act 1062 of 1985, as amended, in order that the Arkansas Development Finance Authority may, when necessary, move expeditiously to take advantage of favorable credit conditions in issuing bonds to provide pooled or consolidated financings for certain projects and activities; and (4) in certain cases, the Arkansas Development Finance Authority may benefit by issuing bonds denominated in currencies other than the currency of the United States of America. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/ Gibson and Bradford

