

State of Arkansas

76th General Assembly

1st Extraordinary Session, 1987

SENATE BILL

43

By: Senators Bradford & Gibson

"AN ACT TO AMEND ACT 173 OF 1967, AS AMENDED [ARK. STATS. SEC. 9-559 ET SEQ.], TO PERMIT BONDS ISSUED BY THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO BE GUARANTEED THEREUNDER; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 2 of Act 173 of 1967, as amended, the same being Arkansas Statutes Sec. 9-560, is hereby amended to read as follows:

"Section 2. The Arkansas Industrial Development Commission (called 'Commission'), in addition to all the duties and functions defined in Act 404 approved March 29, 1955, and Acts amendatory thereto, is hereby empowered to approve or deny by majority vote of the membership of the Commission the guaranty as provided herein of amortization payments on industrial revenue bonds issued by counties or municipalities in accordance with the provisions of Act 9 approved at the First Extraordinary Session of the Sixty-Second General Assembly, January, 1960, as amended (called 'Act No. 9 Bonds'), or revenue bonds issued by the Arkansas Development Finance Authority in accordance with Act 1062 of 1985, as amended (called 'ADFA bonds'), subject to the provisions, restrictions and conditions set forth in this Act. As used in this Act the phrase 'amortization payments' means periodic (monthly, semianual, annual, etc.) payments of interest and installments of principal as required by an Act No. 9 bond indenture or an ADFA bond indenture."

SECTION 2. Section 3 of Act 173 of 1967, as amended, the same being Arkansas Statutes Sec. 9-561, is hereby amended to read as follows:

"Section 3. Amortization payments on Act No. 9 bonds and ADFA bonds may be guaranteed in instances when:

(a) Substantial employment is involved;

(b) The total principal amount of all outstanding Act No. 9 bonds and ADFA bonds under guaranty is not in excess of fifty million dollars (\$50,000,000) except with the prior approval of the State Board of Finance (or any successor thereof) and in no event in excess of one hundred million dollars (\$100,000,000);

(c) No one issue or series of Act No. 9 bonds or ADFA bonds guaranteed hereunder shall exceed two million dollars (\$2,000,000) in principal amount;

(d) Lessee of the industrial project involved is not permitted to purchase or own at any time any of such bonds; and

(e) Lessee is found to be financially responsible, and that sufficient rental income may reasonably be expected to amortize in an orderly manner interest and principal amount of the bonds. The Commission shall promulgate standards and regulations for the evaluation of the financial condition and business history of lessees, and shall require the attachment to each application for guaranty under this Act of a financial report and evaluation by an independent certified public accountant firm, in addition to such examination and evaluation as the Commission may make, in determining whether the lessee meets prescribed minimum standards and qualifications before entering into any guaranty under this Act."

SECTION 3. Section 5 of Act 173 of 1967, as amended, the same being Arkansas Statutes Sec. 9-563, is hereby amended to read as follows:

"Section 5. (a) Each county or municipality requesting a guaranty hereunder shall submit to the Arkansas Industrial Development Commission supporting documents, instruments, contractor's costs or estimated cost of improvements, land costs, and other evidence showing conformity with Act No. 9 as hereinabove identified. When a guaranty is requested with respect to ADFA bonds, the Arkansas Development Finance Authority shall submit to the Commission evidence showing conformity with Act 1062 of 1985, as amended, and such other supporting documents as the Commission shall reasonably require. All applications for guaranties shall be accompanied by a one-time premium payment to the Revenue Bond Guaranty Reserve Account in an amount equal to either (i) three percent (3%) of the amount of the total principal and interest requirements from date of issuance to maturity of the Act No. 9 bonds or ADFA bonds guaranteed or (ii) five percent (5%) of the principal amount of the Act No. 9 bonds or ADFA bonds guaranteed, whichever is the larger amount.

Such premium payment may be collected by the county or municipality or the Arkansas Development Finance Authority from the lessee of the industrial project involved.

(b) All applications filed with the Arkansas Industrial Development Commission under the provisions of this Act shall first be reviewed by the appropriate designated staff officials of the Arkansas Industrial Development Commission and/or by a committee consisting of members of the Arkansas Industrial Development Commission for preliminary review and recommendation prior to being submitted for consideration by the Arkansas Industrial Development Commission. All applications submitted to the Arkansas Industrial Development Commission, 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 herein, and all staff meetings and/or meetings of the review committee of members of the Arkansas Industrial Development Commission established for the purpose of giving preliminary review of such applications, shall be confidential and shall not be open to the public. Upon conclusion of the preliminary review of each request for a guaranty hereunder, if the request for guaranty is submitted to the Arkansas Industrial Development Commission with a recommendation that it be approved, the application and all supporting documents, including the findings and the recommendations resulting from the staff and/or review committee thereof, shall be an open public record available for inspection during all regular business hours. In the event that an application from a municipality or county or the Arkansas Development Finance Authority requesting a guaranty hereunder is not recommended for approval by the Arkansas Industrial Development Commission hereunder, that application and all supporting documents, including all findings and recommendations in regard thereto by the staff and/or review committee, shall continue to be confidential and not open to public inspection. The municipality or county or the Arkansas Development Finance Authority shall be notified in writing of any staff and/or review committee determination that the application is not being submitted to the Arkansas Industrial Development Commission with a recommendation that it be approved, which notice shall advise the municipality or county or the Arkansas Development Finance Authority that the application will be kept confidential unless the municipality or county or the Arkansas Development Finance Authority shall, within thirty days from the date of

receipt of the written notice, file a petition with the Arkansas Industrial Development Commission requesting that the Arkansas Industrial Development Commission 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.

The membership of a review committee, when acting in that capacity, shall never be considered to constitute a quorum of the Arkansas Industrial Development Commission for the purpose of approving an application for guaranty hereunder.

No provision of this Section shall be interpreted to create any private right against any member of the Arkansas Industrial Development Commission or any member of the staff thereof."

SECTION 4. Section 7 of Act 173 of 1967, as amended, the same being Arkansas Statutes Sec. 9-565, is hereby amended to read as follows:

"Section 7. Guaranty agreements entered into by the Commission under the provisions of this Act with respect to Act No. 9 bonds issued by any municipality or county or ADFA bonds shall provide, among other things:

(a) That the Commission guarantees, and said Commission is hereby required, to use the funds on deposit in the Revenue Bond Guaranty Reserve Account to meet amortization payments as guaranteed under this Act as the same become due, in the event, and to the extent, the issuer of the bonds is unable to meet such payments in accordance with the terms of the bond indenture when called on to do so by the trustee of the bondholders. Whenever the Commission, acting under the terms of the guaranty agreement, deems it necessary to assume the obligation of maintenance of any building and/or facility, the amortization payments of which the Commission has guaranteed under the provisions of this Act, the Commission may use funds on deposit in the Revenue Bond Guaranty Reserve Account to pay insurance and maintenance costs required for the preservation of the same and to protect such Reserve Account from loss, or to minimize losses, in such manner as deemed necessary and advisable by the Commission.

(b) That the guaranty shall not be a general obligation of the Commission or of the State of Arkansas, but shall be a special obligation, and in no event shall the guaranty constitute an indebtedness of the Commission or of the State of Arkansas within the meaning of any constitutional or statutory

limitation. Each guaranty agreement shall have plainly stated on the face thereof that the same has been entered into under the provisions of this Act, and that it does not constitute an indebtedness of the Commission or the State of Arkansas within any constitutional or statutory limitation, and that the full faith and credit of the State of Arkansas or any of its revenues are not pledged to meet any of the obligations of the Commission under such guaranty agreement. Each such agreement shall state that the obligation of the Commission under the guaranty shall be limited to the funds available in the Revenue Bond Guaranty Reserve Account as authorized in this Act."

SECTION 5. Section 8 of Act 173 of 1967, as amended, the same being Arkansas Statutes Sec. 9-566, is hereby amended to read as follows:

"Section 8. The Commission is hereby authorized and directed to conduct such investigation as it may determine necessary for the promulgation of regulations to govern the operation of the guaranty program authorized by this Act, which regulations shall include the restriction and conditions imposed by this Act, including particularly those set forth in Sections 3 and 7 hereof, and which may include such other and additional provisions, restrictions, and conditions as the Commission, after the investigation referred to above, shall determine to be proper to achieve the most effective utilization of the guaranty program authorized hereby, including without limitation, a detailing of the remedies that must be exhausted by the bondholders, or a Trustee acting in their behalf prior to calling upon the Commission to perform under its Guaranty Agreement and the subrogation or other rights of the Commission with reference to the industrial project and its operation in the event the Commission makes payment pursuant to the applicable Guaranty Agreement. In this regard, the Commission is hereby expressly authorized to take such action and enter into such agreements and otherwise take such action as may be necessary to exercise the authority conferred by this Act or to evidence the exercise thereof. The regulations promulgated by the Commission to govern the operation of the guaranty program shall contain specific provisions with respect to the rights of the Commission to enter, take over and manage the industrial development properties upon default, and shall set forth the respective rights of the Commission and the bondholders in regard thereto. Such regulations shall be in conformity with Act 9 of 1960, Act 1062 of 1985, and Acts amendatory thereto."

SECTION 6. It is the intention of this Act to amend such sections of Act 173 of 1967, as amended, as are specifically mentioned herein; the remainder of said Act 173 shall remain in full force and effect as enacted until the same shall be further amended or repealed.

SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the General Assembly that permitting bonds issued by the Arkansas Development Finance Authority to be guaranteed under the provisions of Act 173 of 1967, as amended, will further encourage the location of industry in Arkansas, thereby significantly assisting in the economic and industrial development of the State. 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.

