

State of Arkansas
77th General Assembly
Regular Session, 1989
By: Senator Yates

SENATE BILL 125

"AN ACT AUTHORIZING THE ISSUANCE OF TAXABLE BONDS AND OBLIGATIONS BY GOVERNMENTAL UNITS OF THE STATE OF ARKANSAS, AS DEFINED HEREIN; PROVIDING THE PROCEDURES AND OTHER GUIDELINES BY WHICH SUCH BONDS AND OBLIGATIONS MAY BE STRUCTURED, ISSUED AND DELIVERED; AUTHORIZING THE MANNER IN WHICH GOVERNMENTAL UNITS MAY DETERMINE THE VARIOUS PUBLIC PURPOSES FOR SUCH BONDS AND OBLIGATIONS; PROVIDING FOR THE INVESTMENT OF BOND PROCEEDS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. This act shall be referred to as, and may be cited as, the "Taxable Bond Act of 1989."

SECTION 2. The General Assembly of the State of Arkansas hereby finds and declares:

(a) The Supreme Court of the United States, in the case of South Carolina v. Baker, decided April 20, 1988, 108 S. Ct.1355, held that no barrier exists under the Constitution of the United States to the imposition of federal income taxation on interest received by holders of bonds of governmental units. Such exemption from federal income taxation has been a desirable feature of such bonds, operating to reduce interest expense to governmental units and enhancing the marketability of the bonds.

(b) The continued ability of governmental units to provide for the financing of public improvements and other projects and programs which serve important public purposes by the issuance of bonds is essential for the health, welfare, and economic well-being of the people of the State of

Arkansas.

(c) By the adoption of the Internal Revenue Code of 1986, as amended, the Congress of the United States has substantially limited the purposes for which bonds may be issued with interest exempt from federal income taxation and imposed other restrictive provisions as a condition of such exemption. Additionally, under the authority of *South Carolina v. Baker*, the Congress of the United States may be expected to enact other laws and effect changes in federal tax policy to eliminate or further reduce the exemption of interest on bonds of governmental units from federal income taxation, with the result that to provide financing for public purposes, governmental units may now find it in their best interests to issue bonds the interest on which is not exempt from federal income taxation.

(d) Under the Constitution and existing laws of the State, governmental units have had, and continue to have, the power to issue bonds without respect to whether the interest thereon is subject to federal income taxation, but many statutes applicable to governmental units lack effective, modern procedures under which the structure of a taxable financing may comply with current market practices, obtain the lowest effective borrowing cost, or provide terms most suitable to the governmental unit, the project, or the financing program.

(e) The purposes sought to be achieved by this act are to provide governmental units with all means necessary to obtain financing for public purposes under the changing circumstances related to future tax policy of the federal government, and to supplement and complement the provisions of existing and future laws authorizing the issuance of bonds, to the end that governmental units may provide for the health, safety, and welfare of the people by the issuance of bonds under terms and conditions necessary under the then existing conditions.

SECTION 3. As used in this act unless the content otherwise requires:

(1) "Act" means the "Taxable Bond Act of 1989."

(2) "Bonds" means any bonds, issued pursuant to the Arkansas Constitution and pursuant to an Act of the General Assembly heretofore or hereafter enacted and means all debentures, notes, warrants, tax anticipation notes, bond anticipation notes, commercial paper, or other evidence of indebtedness or leases, installment purchase contracts, or other agreements or

certificates of participation therein issued by or on behalf of a governmental unit, secured by revenues from any special fund or source or assessments for local improvements and taxes.

(3) "Foreign currency" means currency, Eurodollars, or money other than the legal tender of the United States.

(4) "Governmental unit" means the State of Arkansas, any department, board, commission, or other agency or instrumentality of the state, or any county, municipality, school district, regional water distribution district, improvement district, public trust or other political subdivision of the state, heretofore or hereafter created, or any board, commission, authority, or other public agency or instrumentality of a governmental unit which is now or hereafter authorized by law to issue bonds. Nothing herein shall be deemed to give any department, board, commission, or other agency of the state any additional authority to issue bonds or take any action independently and without acting by or through the State Board of Finance if the participation of the State Board of Finance is otherwise required by the law under authority of which the bonds are issued.

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

(6) "Taxable bonds" means bonds the interest on which is not, in any manner, exempt from federal income taxation or excludable from gross income for federal income tax purposes.

SECTION 4. The ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of taxable bonds may provide for any of the following:

(1) The bonds shall be in such denominations, in such form, either bearer or registered, and payable at such place or places, either within or without the United States, at such time or times, as in each case, the governmental unit shall determine subject to any limitations on the maturity of bonds set forth in the law under authority of which the bonds are issued.

(2) The bonds shall be payable in legal tender of the United States, in a foreign currency, in commodities, or in precious metals, as the governmental unit shall determine.

(3) The governmental unit may appoint, in connection with the bond issue, a co-trustee located outside of the boundaries of the United States or its territories or possessions so long as it shall also appoint a trustee

otherwise meeting the requirements of the statutes under authority of which the bonds are issued. The governmental unit may appoint, in connection with the bond issue, a paying agent or a co-paying agent located outside the boundaries of the United States or its territories or possessions.

(4) In connection with, or incidental to, the sale and issuance of bonds, the governmental unit may enter into any contracts which it determines to be necessary or appropriate to achieve a desirable effective interest rate in connection with the bonds by means of, but not limited to, contracts commonly known as investment contracts, funding agreements, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, options, puts or calls, whether or not used to hedge payment, rate, spread, or similar exposure. Such contracts or arrangements may also be entered into by governmental units in connection with, or incidental to, entering into any agreement which secures bonds or provides liquidity therefor. Such contracts and arrangements shall be made upon the terms and conditions established by the governmental unit, after giving due consideration for the credit worthiness of the counterparties, where applicable, including any rating by a nationally recognized rating service or any other criteria as may be appropriate.

(5) In connection with, or incidental to, the sale and issuance of the bonds, or entering into any of the contracts or arrangements referred to in subsection (4), the governmental unit may enter into such credit enhancement or liquidity agreements, with such payment, interest rate, security, default, remedy, and other terms and conditions as the governmental unit shall determine.

(6) Notwithstanding any provisions of state law relating to the investment or reinvestment of surplus funds of any governmental unit, proceeds of the bonds and any monies set aside or pledged to secure payment of the principal of, premium, if any, and interest on the bonds, or any of the contracts entered into pursuant to subsection (4), may be invested in securities or obligations described in the ordinance or resolution providing for the issuance of the bonds.

SECTION 5. The bonds may be sold at public or private sale. If the

governing unit shall determine that a negotiated sale of the taxable bonds is in the best interest of the governmental unit, the governmental unit may negotiate for the sale of the taxable bonds.

SECTION 6. (1) The issuance of taxable bonds by a governmental unit for any purpose permitted by the law heretofore or hereafter enacted under authority of which such taxable bonds are issued, whether such purposes are set forth in such law by specific category or by a general authorization to accomplish public purposes, is declared to constitute a lawful and public purpose.

(2) When the bond proceeds of taxable bonds are invested or reinvested by the governmental unit in obligations permitted by this Act, the issuance of the taxable bonds shall be deemed to be for a public purpose; provided, the net proceeds of such investment or reinvestment (after sufficient provision is made for debt service on the bonds), are then applied to a purpose for which the governmental unit has authority to issue bonds and the governmental unit has determined upon appropriate findings of fact that such application of net proceeds is for a public purpose which the governmental unit is authorized or empowered to perform.

SECTION 7. The proceeds of an issue of taxable bonds and the investment earnings thereon shall be used, in the manner, and to the extent specified in the ordinance or resolution providing for the issuance of the bonds, by the governmental unit issuing the bonds for a purpose specified for the issuance of bonds in the law under authority of which the bonds are issued.

Notwithstanding the preceding sentence, invested or reinvested proceeds of an issue of taxable bonds shall be deemed to have been expended for a purpose specified for the issuance of bonds in the law under authority of which the bonds are issued if the earnings thereon and proceeds of liquidation of the investments acquired with such proceeds, to the extent that they are (a) applied to pay or service debt service on the bonds, or (b) applied toward such purpose.

SECTION 8. Notwithstanding any provisions of state law relating to the investment or reinvestment of surplus funds of any governmental unit or any more restrictive provisions of the law under authority of which the bonds are

issued, the proceeds of taxable bonds issued to refund or advance refund a prior issue or issues of bonds may be invested in securities or obligations described in the ordinance or resolution providing for the issuance of such refunding bonds.

SECTION 9. (a) Any provision of law, whether special or general, which imposes limitations or restrictions on the issuance of taxable bonds or is otherwise in conflict with this Act with respect to the issuance of taxable bonds is expressly superseded by this Act to the extent of such conflict.

(b) This Act is supplemental to all other provisions of state law governing the issuance of bonds by any governmental unit and, except as otherwise provided in this Act, the provisions of state law governing the issuance of bonds by any governmental unit shall continue to apply to the issuance by such governmental unit of taxable bonds.

(c) Nothing herein shall be deemed to broaden or otherwise alter any provisions of state law as they relate to the issuance of the bonds the interest on which is, in some manner, exempt or excludable from federal income taxation.

(d) The reference herein to law providing authority for issuance of bonds shall mean laws now in effect and as hereinafter enacted or amended by the General Assembly.

(e) Nothing contained herein shall be construed to impugn the validity of any taxable bonds heretofore issued.

(f) Nothing contained in this Act shall authorize any governmental unit to issue or sell bonds, taxable or non-taxable, or use the proceeds thereof to purchase, condemn or otherwise acquire a utility generating plant, transmission or distribution system owned or operated by a regulated public utility without the consent of such regulated public utility company.

SECTION 10. The provisions of this Act shall be liberally construed in order to effectively carry out the purposes of this act.

SECTION 11. The provisions of this Act are hereby declared to be severable. If any provision of this Act shall be declared to be invalid or to be inapplicable to any person or circumstance, such determination shall not effect the validity or applicability of the other provisions of this Act.

SECTION 12. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. Emergency. It is hereby found and declared that there is an immediate and urgent need for providing more readily available financing for governmental units of the State of Arkansas in order that they may carry out their responsibilities previously established by the General Assembly; and that this need can be remedied or alleviated through the adoption of this Act and the authorization of the issuance of taxable bonds for public purposes as provided herein. This Act is immediately necessary in order that such financings can be accomplished and the resulting public benefits realized. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and in effect from after its adoption.