

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representatives Cunningham**
5 **and Mahony**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO LEVY AN EXCISE TAX ON THE GROSS RECEIPTS
9 DERIVED FROM THE GENERATION OF HYDROELECTRIC POWER; AND
10 FOR OTHER PURPOSES."

11

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

13

14 SECTION 1. (a) There is hereby levied upon the gross receipts or gross
15 proceeds derived from the generation or production of electric power through
16 the means of hydroelectric power for sale, profit, or commercial use, either
17 directly or through the activity of others, in whole or in part, a tax equal
18 to four percent (4%) of the gross receipts or gross proceeds derived from the
19 sale thereof by the generator or the producer of the electricity.

20 (b) The measure of the tax shall be the value of all hydroelectric
21 power generated or produced in this state for sale, profit, or commercial use,
22 regardless of the place of sale or the fact that transmission may be to points
23 outside this state.

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25 SECTION 2. There is hereby levied upon every person engaging within
26 this state in the business of generating or producing electricity through the
27 means of hydroelectric power for sale, profit, or commercial use, either
28 directly or indirectly through the activity of others, in whole or in part, or
29 in the business of selling electricity produced through the means of
30 hydroelectric power to consumers, or in both businesses, a tax as follows:

31 (a) Two tenths of one cent times the kilowatt hours of net
32 hydroelectric power generation available for sale that was generated or
33 produced in this state by the taxpayer during the taxable year. The measure
34 of tax under this paragraph shall be equal to the total kilowatt hours of net
35 hydroelectric power generation available for sale that was generated or

1 produced in this state by the taxpayer regardless of the place of sale or use,
2 or the fact that transmission may be made to points outside this state.

3 (b) Fifteen hundredths of one cent times the kilowatt hours of
4 hydroelectric power that were not generated or produced in this state by the
5 taxpayer but were sold to consumers in this state. The measure of tax under
6 this paragraph shall be equal to the total kilowatt hours of electricity sold
7 to consumers in this state after the effective date of this act, that were not
8 generated or produced in this state by the taxpayer, to be determined by
9 subtracting from the total kilowatt hours of electricity sold to consumers in
10 the state the net kilowatt hours of electricity generated or produced in the
11 state by the taxpayer during the taxable year.

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13 SECTION 3. Beginning on August 1, 1991, every person taxable under this
14 act shall determine their liability for payment of tax under Section 1 of this
15 act and under Section 2 of this act, and the tax due shall be the greater of
16 the two amounts.

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18 SECTION 4. This act shall not apply to kilowatt hours of electricity
19 generated and sold, or purchased and resold, by a municipally owned electric
20 system.

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22 SECTION 5. The taxes levied under this act shall be due and payable as
23 follows:

24 (a) The tax shall be due and payable in quarterly installments within
25 one month from the expiration of each quarter in which the tax accrued. Each
26 taxpayer shall, within one month from the expiration of each quarter, make out
27 an estimate of the tax for which he is liable for such quarter, sign the same
28 and mail it together with a remittance to the Director on such forms as he may
29 prescribe.

30 (b) When the total tax for which any person is liable under this act
31 does not exceed two hundred dollars (\$200) in any year, the taxpayer may pay
32 the tax quarterly as above, or, with the consent in writing of the Director,
33 at the end of the month next following the close of the year in which the tax
34 accrued.

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1 SECTION 6. Before August 1, 1991, the Director of the Department of
2 Finance and Administration shall promulgate such rules and regulations as are
3 necessary to enforce this act.

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5 SECTION 7. (a) All revenues derived from the tax levied by this act
6 shall be deposited by the Director of the Department of Finance and
7 Administration in the State Treasury as special revenues.

8 (b) After deducting three percent (3%) of the revenues for distribution
9 to the Constitutional Officers Fund and the State Central Services Fund, to be
10 used for the purposes as provided by law, the State Treasurer shall credit the
11 net amount thereof as follows:

12 (1) (A) Eighty percent (80%) of the net amount shall be credited
13 to the Arkansas Natural and Cultural Resources Grants and Trust Fund, to be
14 preserved and managed by the Arkansas Natural and Cultural Resources Council
15 for use in the acquisition of land, management and stewardship of state-owned
16 lands or the preservation of state-owned historic sites, buildings,
17 structures, or objects which the council determines to be of value for
18 recreation or conservation purposes, with the properties to be used,
19 preserved, and conserved for the benefit of this and future generations.

20 (B) It is not the intention of this section that the council
21 shall itself manage, operate, or maintain any lands so acquired, but, rather,
22 that it shall, from time to time in its own discretion, make grants to other
23 agencies of the state authorized by law to acquire, manage, operate, and
24 maintain the lands.

25 (C) The grants shall be made in such amounts, for such purposes,
26 and to such agencies as the council in its discretion shall select.

27 (D) However, in choosing among competing purposes or
28 expenditures, the council shall be guided by the principles set forth in the
29 Arkansas Statewide Comprehensive Outdoor Recreation Plan as it may exist and
30 be in force from time to time.

31 (E) In funding state park improvements, the council should
32 initially emphasize the restoration or renovation of existing facilities and
33 historic structures within the system.

34 (F) The council in its discretion shall have power either to
35 allow moneys paid into the fund to accumulate, with only the income thereon

1 being spent, or to expend the whole or any part of the corpus or principal of
2 the fund.

3 (G) However, the council shall have power to do any and all
4 things necessary to take advantage of federal or private funds donated or
5 obtainable through the use of the fund.

6 (H) Without limiting the generality of the foregoing, the council
7 shall have power to set aside any portion of the fund into a separate and
8 segregated account, the corpus or principal of which shall be inviolate, and
9 only the income of which may be expended, to the extent necessary to comply
10 with any federal law, regulation, or other requirement in connection with
11 federal matching or grant moneys.

12 (I) As used in this section, the term "stewardship" shall include
13 moneys necessary for the maintenance, preservation, operation, improvement,
14 and management of state-owned lands acquired for recreational or
15 conservational purposes and shall include such other stewardship purposes as
16 may be authorized by the Arkansas Natural and Cultural Resources Council;

17 (J) The council in its discretion is hereby authorized to pledge
18 all or any portion of the tax revenues credited or to be credited to the
19 Arkansas Natural and Cultural Resources Grants and Trust Fund to secure the
20 issuance of bonds as provided by Section 8 hereof for the purposes set forth
21 in Section 7(b)(1)(A) of this act.

22 (2) Ten percent (10%) of the net amount shall be distributed to
23 the Parks and Tourism Fund, to be used by the Department of Parks and Tourism,
24 on approval of the Parks, Recreation, and Tourism Grant Advisory Committee,
25 for making grants for outdoor recreational purposes to cities and counties of
26 this state in accordance with the Statewide Comprehensive Outdoor Recreation
27 Plan;

28 (3) Ten percent (10%) of the net amount shall be credited to the
29 Natural and Cultural Resources Historic Preservation Fund, to be used by the
30 Arkansas Natural and Cultural Resources Council for providing a source of
31 funds for the operation of the state historic preservation program, for grants
32 to the cities and counties for preservation projects, and for the "Main
33 Street" program. This amount shall be distributed as follows:

34 (A) Twenty percent (20%) for maintenance and operation of the
35 Natural and Cultural Resources Council;

1 (B) Forty percent (40%) for seed capital money for cities under
2 the "Main Street" program; and

3 (C) Forty percent (40%) for grants to cities and counties for
4 historic preservation projects.

5 (4) No revenues credited under subdivisions (b) (1), (b) (2), and
6 (b) (3) of this section shall be disbursed until on or after July 1, 1992.

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8 SECTION 8. BONDS. (a) Whenever the Arkansas Natural and Cultural
9 Resources Council shall determine the need to issue bonds for any of the
10 purposes set forth in Section 7(b) (1) of this act, it shall authorize the
11 issuance of such bonds by resolution specifying the principal amount of bonds
12 to be issued, the purpose or purposes for which the bonds are to be issued and
13 the maximum amount of the tax revenues credited or to be credited to the fund
14 pledged to the retirement of such bonds. When bonds are to be issued for more
15 than one (1) purpose, the principal amount of bonds applicable to each purpose
16 shall be stated in the resolution.

17 (b) Whenever used or referred to in this Section 8 of the act unless a
18 different meaning clearly appears from the context:

19 (1) "bonds" means bonds issued pursuant to this act.

20 (2) "chairman" means the chairman of the Arkansas Natural and
21 Cultural Resources Council.

22 (3) "council" means the Arkansas Natural and Cultural Resources
23 Council.

24 (4) "resolution" means a resolution of the council.

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

26 (6) "tax revenues" means those revenues derived from the tax
27 levied by this act and credited to the Arkansas Natural and Cultural Resources
28 Grants and Trust Fund, as provided in Section 7(b) (1) (A) of this act.

29 (c) The bonds may be in registered or other form, may be in such
30 denominations, may be exchangeable for bonds of another denomination, may be
31 made payable at such places within or without the state, may be issued in one
32 (1) or more series, may bear such date or dates, and mature at such time or
33 times, may be payable in such medium of payment, may be subject to such terms
34 of redemption, and may contain such other terms, covenants and conditions as
35 the resolution or the trust indenture (as hereinafter authorized) may provide,

1 including, without limitation, those pertaining to the custody and application
2 of the proceeds of the bonds, the maintenance of various funds and reserves,
3 the nature and extent of the pledge and security, the remedies on default, the
4 rights, duties and obligations of the council and the trustee, if any, for the
5 owners of the bonds, and the rights of the owners of the bonds. The bonds may
6 bear such rate or rates of interest as the resolution shall provide. There
7 may be successive bond issues for the purpose of financing the lands,
8 buildings, structures and sites authorized in this act.

9 (d) The bonds shall be secured by, and contain a pledge of all or any
10 portion of tax revenues credited or to be credited to the fund authorized by
11 the council to pay the bonded indebtedness, and shall be payable solely from
12 such tax revenues authorized by this act, and it shall be plainly stated on
13 the face of each bond that such has been issued under the provision of this
14 act; provided, however the council is not prohibited from using other revenues
15 or receipts to retire the bonds.

16 (e) The resolution authorizing the bonds may provide for the execution
17 by the chairman of the council of a trust indenture which defines the rights
18 of the owners of the bonds and provides the appointment of a trustee for the
19 owners of the bonds. Such trust indenture may provide for the priority
20 between and among successive issues and may contain any of the provisions set
21 forth in paragraph (c) above and any other terms, covenants and conditions
22 that are deemed desirable.

23 (f) The bonds may be sold at public or private sale for such price,
24 including, without limitation, sale at a discount, and in such manner as the
25 council may determine.

26 (g) The bonds shall be executed in the manner provided by the
27 Registered Public Obligations Act of Arkansas as the same may be amended.

28 (h) Bonds may be issued under this act for the purpose of refunding any
29 outstanding bonds. Such refunding bonds may be either sold for cash or
30 delivered in exchange for the outstanding obligations. If sold for cash, the
31 proceeds may be either applied to the payment of the obligations refunded or
32 deposited in irrevocable trust for the retirement thereof either at maturity
33 or on an authorized redemption date. Refunding bonds shall be authorized,
34 issued and secured in the manner provided for the bonds being refunded, and
35 shall have all the attributes of the refunded bonds. The resolution under

1 which such refunding bonds are issued may provide that any refunding bonds
2 shall have the same priority of pledge of tax revenues from the fund as
3 originally pledged for payment of the obligations refunded thereby.

4 (i) The resolution or trust indenture authorized in this act may,
5 but need not, impose a forecloseable mortgage lien upon the lands, buildings,
6 structures or sites financed with the proceeds of bonds issued under this act,
7 and the nature and extent of such mortgage lien may be controlled by the
8 resolution or trust indenture including, without limitation, provisions
9 pertaining to the release of all or part of the lands, buildings, structures
10 or sites from the mortgage lien, the priority of the mortgage lien in the
11 event of successive bond issues, and authorizing any owner of bonds, or a
12 trustee on behalf of all owners, either at law or in equity, to enforce the
13 mortgage lien and, by proper suit, compel the performance of the duties of the
14 officials of the council set forth in this act or in the resolution or trust
15 indenture authorizing and/or securing the bonds. Reference in this subsection
16 (i) to mortgage lien shall include a security interest in any personal
17 property constituting the lands, buildings, structures or sites, or part
18 thereof, financed with the proceeds of bonds issued under this act.

19 (j) If the issuance of bonds is authorized in accordance with the
20 provisions of this act, the council is authorized to obtain interim financing
21 pending the delivery of all or any part of the bonds from such sources and
22 upon such terms as the council shall determine. As evidence of any
23 indebtedness so incurred, the council may execute and deliver its promissory
24 note, or notes, and pledge to the payment thereof the tax revenues from the
25 fund to be pledged to the bonds, and to otherwise secure the notes as bonds
26 issued under this act may be secured. The notes may bear such date or dates,
27 may mature at such time or times, not exceeding three (3) years from their
28 respective dates, may bear interest such rate or rates, may be in such form,
29 may be executed in such manner, may be payable at such place or places, may
30 contain such provisions for prepayment prior to maturity and may contain such
31 other terms, or covenants, and conditions as the resolution may provide which
32 are not inconsistent with the provisions of this act.

33 (k) Bonds and notes issued under the provisions of this act and the
34 income thereon shall be exempt from all state, county and municipal taxes,
35 including, without limitation, all income, property and inheritance taxes.

1 (1) All bonds and notes issued under the provisions of this act shall
2 be and are hereby declared to be negotiable instruments within the meaning of
3 the negotiable instruments law of the state.

4 (m) No officer, employee or member of the council shall be personally
5 liable on any bonds issued under the provisions of this act or for any damages
6 sustained by any person in connection with any contracts entered into to carry
7 out the purposes and intent of this act unless such person shall have acted
8 with a corrupt intent.

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10 SECTION 9. SUPPLEMENTAL NATURE OF THIS ACT: It is the specific intent
11 of this act that the provisions hereof are supplemental to other
12 Constitutional or statutory provisions now existing or hereafter adopted which
13 may provide for the financing of natural and cultural resources of a public
14 nature. Nothing contained in this act shall be deemed to be a restriction or
15 limitation upon alternative means of financing previously available or
16 hereafter made available to the council for the purposes herein set forth.

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18 SECTION 10. LIBERAL CONSTRUCTION: This act shall be construed
19 liberally to effectuate the legislative intent and the purposes of this act as
20 complete and independent authority for the performance of each and every act
21 and thing herein authorized and all powers herein granted shall be broadly
22 interpreted to effectuate such intent and purposes and not as a limitation of
23 powers.

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25 SECTION 11. All provisions of this act of a general and permanent
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
27 Code Revision Commission shall incorporate the same in the Code.

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29 SECTION 12. If any provision of this act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 act are declared to be severable.

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35 SECTION 13. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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3 SECTION 14. EMERGENCY. It is hereby found and determined by the
4 General Assembly that the acquisition of land, management and stewardship of
5 state-owned lands and the preservation of state-owned historic sites,
6 buildings, structures, or objects for recreational and conservation purposes
7 to be preserved and conserved for the benefit of this and future generations
8 is an important and vital interest of the State of Arkansas. Therefore, an
9 emergency is hereby declared to exist and this act, being immediately
10 necessary for the protection of the public peace, health and safety, shall
11 take effect, and be in full force, immediately on its passage and approval.

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