

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**

# **A Bill**

**SENATE BILL**

4 **By: Senators Bookout and Bradford**

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## **For An Act To Be Entitled**

8 "AN ACT PROVIDING THE PROCEDURES FOR THE ISSUANCE OF  
9 LIBRARY BONDS BY MUNICIPALITIES AND COUNTIES IN  
10 IMPLEMENTATION OF AMENDMENT 72 TO THE CONSTITUTION OF  
11 ARKANSAS; DEFINING THE PURPOSES FOR WHICH LIBRARY BONDS  
12 MAY BE ISSUED; PROVIDING PROCEDURES FOR ELECTIONS THEREON;  
13 AUTHORIZING THE LEVY AND PLEDGE OF AD VALOREM TAXES TO THE  
14 BONDS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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16

## **Subtitle**

17 "PROVIDING THE PROCEDURES FOR THE ISSUANCE OF LIBRARY  
18 BONDS BY MUNICIPALITIES AND COUNTIES."

19

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

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22 SECTION 1. Title.

23 This Act shall be referred to and may be cited as the "Local Government  
24 Library Bond Act of 1993."

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SECTION 2. Legislative Intent.

The people of the State of Arkansas by the adoption of Arkansas Constitution, Amendment 72, have expressed their intention to provide cities, having a population of not less than five thousand (5,000), expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements to or construction of public city libraries and to provide counties expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements to or construction of county libraries, for county library services or systems and have empowered the General Assembly to define and prescribe certain matters with respect to the exercise of this power and authority. To that end this Act is adopted to enable the accomplishment and realization of the public purposes intended by Arkansas Constitution, Amendment 72, and is not intended to otherwise limit in any manner the exercise of the powers of counties and municipalities.

SECTION 3. Definitions.

(a) As used in this Act, unless the context otherwise requires:

(1) "Bonds" means bonds issued pursuant to this Act or under Arkansas Constitution, Amendment 72, if issued prior to the enactment hereof;

(2) "Capital improvements to or construction of public libraries" in the case of municipalities, or "capital improvements to or construction of county libraries, for county library services or systems," in the case of counties or "capital improvements" generally, for the purposes of Arkansas Constitution, Amendment 72, and this Act mean, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(A) Any physical public library betterment or improvement or any preliminary plans, studies, or surveys relative thereto;

(B) Land or rights in land, including, without limitation, leases, air rights, easements, rights-of-way, or licenses; and

(C) Any furnishings, machinery, vehicles, apparatus, or equipment for any public library betterment or improvement, which shall include, without limiting the generality of the foregoing definition, the following: administrative, executive, or other public library offices;

1 computer systems, hardware and apparatus; research and reading materials;

2 (3) "Chief executive" means the mayor of a municipality or the  
3 county judge of a county;

4 (4) "Clerk" means the clerk or recorder of a municipality or  
5 county clerk of a county;

6 (5) "Director" means the Director of the Department of Finance  
7 and Administration or any successor to the duties thereof and any authorized  
8 agent thereof;

9 (6) "County" means any county in the State of Arkansas;

10 (7) "Issuer" means a municipality or a county;

11 (8) "Legislative body" means the quorum court of a county or the  
12 council, board of directors, board of commissioners, or similar elected  
13 governing body of a city;

14 (9) "Municipality" means any city having a population of not less  
15 than five thousand (5,000) persons in the State of Arkansas;

16 (10) "Ordinance" means an ordinance, resolution, or other  
17 appropriate legislative enactment of a legislative body;

18 (11) "Ad valorem tax" or "tax" means the tax authorized for the  
19 payment of bonded indebtedness in Arkansas Constitution, Amendment 72.

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21 SECTION 4. Construction.

22 This Act shall be construed liberally to effectuate the legislative  
23 intent and the purposes of this subchapter as complete and independent  
24 authority for the performance of each and every act and thing herein  
25 authorized and all powers herein granted shall be broadly interpreted to  
26 effectuate the intent and purposes and not as a limitation of powers.

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28 SECTION 5. Act supplemental.

29 (a) It is the specific intent of this Act that the provisions of this  
30 Act are supplemental to other constitutional or statutory provisions which may  
31 provide for the financing of capital improvements for public libraries.

32 (b) Nothing contained in this Act shall be deemed to be a restriction  
33 or limitation upon alternative means of financing previously available or  
34 hereafter made available to municipalities or counties for the purposes set  
35 forth in this Act.

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SECTION 6. Venue.

For the purposes of this Act, when it is necessary to determine whether publication or other activity has taken place within a municipality lying in more than one (1) county, or where suit shall be filed contesting an election in that municipality, then the publication, activity, or suit shall take place in the county in which a majority of the people living in the municipality reside.

SECTION 7. Bonds generally - Authorizing ordinance.

Whenever one hundred (100) or more tax paying electors of any municipality shall file a petition with the Mayor, or one hundred (100) or more tax paying electors of any county shall file a petition with the County Court, asking that an ad valorem tax on real and personal property be levied for capital improvements which petition shall specify a rate of taxation not to exceed three (3) mills on the dollar, a legislative body shall authorize the issuance of the bonds by ordinance specifying the principal amount of bonds to be issued, and the maximum rate of any ad valorem tax to be levied and pledged to the retirement of the bonds as specified in Arkansas Constitution, Amendment 72.

SECTION 8. Bonds generally - Election to authorize issuance.

(a) The question of the issuance of such bonds shall be submitted to the electors of the county or municipality at the general election or at a special election called for that purpose as provided in the ordinance and held in the manner provided in this Act.

(b) Except as otherwise provided in this Act, the election shall be held and conducted in the same manner as a special or general election under the election laws of the state.

(c) The ordinance shall set forth the form of the ballot question or questions, in the form prescribed by the Arkansas Constitution, Amendment 72, which shall include a statement of the purpose or purposes for which the bonds are to be issued and the maximum rate of any ad valorem tax to be levied for payment of bonded indebtedness.

(d) Notice of the election shall be given by the clerk of the issuer

1 by one (1) publication in a newspaper having general circulation within the  
2 municipality or county not less than ten (10) days prior to the election. No  
3 other publication or posting of a notice by any other public official shall be  
4 required.

5 (e) The election shall be held no earlier than thirty (30) days after  
6 the date of adoption of the ordinance in which the election is called by the  
7 legislative body.

8 (f) The chief executive officer of the municipality or county shall  
9 proclaim the results of the election by issuing a proclamation and publishing  
10 it one (1) time in a newspaper having general circulation within the  
11 municipality or county.

12 (g) (1) The results of the election as stated in the proclamation  
13 shall be conclusive unless suit is filed in the circuit court in the county in  
14 which the issuer is located within thirty (30) days after the date of the  
15 publication.

16 (2) No other action shall be maintained to challenge the  
17 validity of the bonds and of the proceedings authorizing the issuance of the  
18 bonds unless suit is filed in such circuit court within thirty (30) days after  
19 the date of the adoption of an ordinance authorizing the sale of the bonds.

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21 SECTION 9. Bonds generally - Terms and conditions.

22 (a) As the ordinance or trust indenture as authorized in this Act may  
23 provide, the bonds may:

- 24 (1) Be in registered or other form;
- 25 (2) Be in such denominations;
- 26 (3) Be exchangeable for bonds of another denomination;
- 27 (4) Be made payable at such places within or without the state;
- 28 (5) Be issued in one (1) or more series;
- 29 (6) Bear such date or dates;
- 30 (7) Mature at such time or times;
- 31 (8) Be payable in such medium of payment;
- 32 (9) Be subject to such terms of redemption; and
- 33 (10) May contain such other terms, covenants, and conditions,

34 including, without limitation, those pertaining to:

35 (A) The custody and application of the proceeds of the

1 bonds;

2 (B) The collection and disposition of tax collections;

3 (C) The maintenance of various funds and reserves;

4 (D) The nature and extent of the pledge and security;

5 (E) The maintaining of taxes;

6 (F) The remedies on default;

7 (G) The rights, duties, and obligations of the legislative  
8 body of the issuer and the trustee, if any, for the owners of the bonds; and

9 (H) The rights of the owners of the bonds.

10 (b) All bonds and notes issued under the provisions of this Act shall  
11 be and are declared to be negotiable instruments within the meaning of the  
12 negotiable instruments law of the state.

13

14 SECTION 10. Bonds generally - Interest rates.

15 Bonds for capital improvements issued pursuant to this Act shall not  
16 bear a rate of interest in excess of the rate provided in the Arkansas  
17 Constitution.

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19 SECTION 11. Bonds generally - Trust indenture.

20 (a) The ordinance authorizing the bonds may provide for the execution  
21 by the chief executive officer of the issuer of a trust indenture which  
22 defines the rights of the owners of the bonds and provides for the appointment  
23 of a trustee for the owners of the bonds.

24 (b) The trust indenture may provide for the priority between and among  
25 successive issues and may contain any of the provisions set forth in Section 9  
26 hereof and any other terms, covenants, and conditions that are deemed  
27 desirable.

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29 SECTION 12. Bonds generally - Contents.

30 It shall be plainly stated on the face of each bond that it has been  
31 issued under the provisions of the Arkansas Constitution, Amendment 72, and  
32 this Act.

33

34 SECTION 13. Bonds generally - Execution.

35 The bonds shall be executed in the manner provided by the Registered

1 Public Obligations Act of Arkansas, § 19-9-401, et seq., as that act may be  
2 amended.

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4 SECTION 14. Bonds generally - Sale.

5 The bonds may be sold at public or private sale for such price,  
6 including, without limitation, sale at a discount, and in such manner as the  
7 legislative body of the issuer may determine.

8

9 SECTION 15. Bonds generally - Pledge of taxes generally.

10 The bonds shall be secured by, and contain a pledge of, any tax or  
11 combination of taxes authorized to pay the bonded indebtedness and shall be  
12 payable solely from the taxes authorized by the Arkansas Constitution,  
13 Amendment 72, and this Act. However, the issuer is not prohibited from using  
14 other taxes, revenues, or receipts to retire the bonds.

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16 SECTION 16. Bonds generally - Pledge and collection of ad valorem  
17 taxes.

18 (a) The ad valorem tax pledged for payment of bonds shall constitute a  
19 special fund pledged as security for the payment of such indebtedness.

20 (b) (1) The ad valorem tax shall never be extended for any other  
21 purpose, nor collected for any greater length of time than necessary to retire  
22 such bonded indebtedness.

23 (2) However, tax collections in excess of the subject required  
24 to retire the debt according to its terms may, subject to covenants entered  
25 into with the owners of the bonds, be pledged as security for the issuance of  
26 additional bonds if authorized by the electors.

27 (3) The tax for the additional bonds shall terminate within the  
28 time provided for the tax originally imposed.

29 (c) Upon retirement on the bonded indebtedness, any surplus tax  
30 collections which may have accumulated shall be transferred to the general  
31 fund of the issuer, and shall be used for maintenance and operation of the  
32 public library.

33 (d) The collection of ad valorem taxes, or a portion thereof, may be  
34 suspended by the issuer when not required for the payment of the bonds,  
35 subject to any covenants with the owners of the bonds.

1 (e) Notwithstanding any other provision of this Act, a tax approved by  
2 the voters for the purpose of paying bonded indebtedness shall not be reduced  
3 or diminished, nor shall it be used for any other purpose than to pay  
4 principal of, premium or interest on, and the reasonable fees of a trustee or  
5 paying agent, so long as the bonded indebtedness shall remain outstanding and  
6 unpaid.

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8 SECTION 17. Bonds generally - Successive issues.

9 There may be successive bond issues for the purpose of financing the  
10 same capital improvements.

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12 SECTION 18. Bonds generally - Mortgage lien.

13 (a) The ordinance or trust indenture authorized in Section 7 or  
14 Section 9 of this Act may, but need not, impose a foreclosable mortgage lien  
15 upon the capital improvements financed with the proceeds of bonds issued under  
16 this Act.

17 (b) The nature and extent of such mortgage lien may be controlled by  
18 the ordinance or trust indenture, including, without limitation, provisions:

19 (1) Pertaining to the release of all or part of the land,  
20 buildings, or facilities from the mortgage lien;

21 (2) Pertaining to the priority of the mortgage lien in the event  
22 of successive bond issues; and

23 (3) Authorizing any owner of bonds, or a trustee on behalf of  
24 all owners, either at law or in equity, to enforce the mortgage lien and, by  
25 proper suit, compel the performance of the duties of the officials of the  
26 issuer set forth in this Act or in the ordinance or trust indenture  
27 authorizing and securing the bonds.

28 (c) References in this section to mortgage lien shall include a  
29 security interest in any personal property constituting the capital  
30 improvements, or part thereof, financed with the proceeds of bonds issued  
31 under this Act.

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33 SECTION 19. Bonds generally - Liability.

34 No officer, employee, or member of the legislative body of the issuer  
35 shall be personally liable on any bonds issued under the provisions of this



1 Act or for any damages sustained by any person in connection with any  
2 contracts entered into to carry out the purposes and intent of this Act unless  
3 that person has acted with a corrupt intent.

4

5 SECTION 20. Bonds generally - Tax exemption.

6 Bonds and notes issued under the provisions of this Act and the income  
7 thereon shall be exempt from all state, county, and municipal taxes,  
8 including, without limitation, all income, property, and inheritance taxes.

9

10 SECTION 21. Bonds generally - Interim borrowing.

11 (a) If the issuance of bonds is authorized in accordance with the  
12 provisions of this Act, a municipality or county is authorized to obtain  
13 interim financing pending the delivery of all or any part of the bonds from  
14 such sources and upon such terms as the municipality or the county shall  
15 determine.

16 (b) As evidence of any indebtedness so incurred, the municipality or  
17 the county may execute and deliver its promissory note, or notes, and pledge  
18 to the payment thereof the tax or taxes approved by the voters to be pledged  
19 to the bonds, and to otherwise secure the notes as bonds issued under this Act  
20 may be secured.

21 (c) The notes may bear such date or dates, may mature at such time or  
22 times, not exceeding three (3) years from their respective dates, may bear  
23 interest at such rate or rates, may be in such form, may be executed in such  
24 manner, may be payable at such place or places, may contain such provisions  
25 for prepayment prior to maturity and may contain such other terms, or  
26 covenants, and conditions as the ordinance may provide which are not  
27 inconsistent with the provisions of this Act.

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29 SECTION 22. Refunding bonds.

30 (a) Bonds may be issued under this Act for the purpose of refunding  
31 any outstanding bonds issued pursuant to Arkansas Constitution, Amendment 72,  
32 and this Act.

33 (b) (1) The refunding bonds may be either sold for cash or delivered in  
34 exchange for the outstanding obligations.

35 (2) If sold for cash, the proceeds may be either applied to the

1 payment of the obligations refunded or deposited in irrevocable trust for the  
2 retirement thereof either at maturity or on an authorized redemption date.

3 (c) Refunding bonds shall in all respects be authorized, issued, and  
4 secured in the manner provided for the bonds being refunded, and shall have  
5 all the attributes of the refunded bonds. However, if the refunding bonds are  
6 not in a greater principal amount than the bonds being refunded the question  
7 of issuing such refunding bonds need not be submitted at an election.

8 (d) The ordinance under which the refunding bonds are issued may  
9 provide that any refunding bonds shall have the same priority of lien on all  
10 sources of taxation or other income as originally pledged for payment of the  
11 obligation refunded thereby.

12 (e) (1) Bonds may also be issued under the provisions of this Act for  
13 the purpose of refunding any outstanding revenue bonds, including bonds  
14 secured in whole or in part by revenues derived from any special tax pledged  
15 thereto, issued, whether or not issued prior or subsequent to the effective  
16 date of this Act, to finance capital improvements if the question of the  
17 issuance of the refunding bonds is submitted to the electors in the manner  
18 provided in Section 8 of this Act.

19 (2) (A) The refunding bonds may be either sold for cash or  
20 delivered in exchange for the outstanding obligations.

21 (B) If sold for cash, the proceeds may either be applied to  
22 the payment of the bonds being refunded or deposited in an irrevocable trust  
23 for the retirement thereof at maturity or on an authorized redemption date.

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25 SECTION 23. Taxes not state revenues.

26 It is the express intent of the General Assembly that any tax levied  
27 under the authority of this Act by a municipality or county for the purpose of  
28 financing capital improvements for public libraries shall not constitute  
29 revenues of the state within the meaning of any constitution or statutory  
30 provisions, but such tax shall at all time continue to be revenues of the  
31 particular municipality or county notwithstanding the participation or  
32 involvement, for the convenience of administration, by the Director of the  
33 Department of Finance and Administration or the State Treasurer in the manner  
34 authorized in this Act in any phase of collection, holding, or distribution of  
35 proceeds of any tax authorized under this Act.

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SECTION 24. Separability.

Notwithstanding any other evidence of legislative intent, it is hereby declared that the provisions of this Act are severable and if any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 25. 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 26. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 27. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 26. Emergency Clause.

It is hereby found and declared that by virtue of adoption of Arkansas Constitution, Amendment 72, that there are now no provisions for municipalities and counties to conduct elections or otherwise implement the provisions of said amendment and that municipalities and counties have an immediate and pressing need for borrowing funds through the issuance of bonds authorized by Amendment 72, attributable in substantial part to the lack of authority prior to the adoption of Amendment 72, for the levy and pledge of ad valorem taxes sufficient to finance the construction of capital improvements to or for libraries in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the protection of the public peace, health and safety, shall take effect and be in full force, immediately upon its passage and approval.

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