

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Senators Bradford and Bookout**

5

6

7

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."

15

16

Subtitle

17 "AN ACT PROVIDING THE PROCEDURES FOR THE ISSUANCE OF
18 LIBRARY BONDS."

19

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

21

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."

25

26 SECTION 2. Legislative Intent.

27 The people of the State of Arkansas by the adoption of Arkansas
28 Constitution, Amendment 72, which amends Arkansas Constitution, Amendments 30
29 and 38, have expressed their intention to provide cities, having a population
30 of not less than five thousand (5,000), expanded powers and authority with
31 respect to the creation of bonded indebtedness for capital improvements to or
32 construction of public city libraries and to provide counties expanded powers
33 and authority with respect to the creation of bonded indebtedness for capital
34 improvements to or construction of county libraries, for county library
35 services or systems and have empowered the General Assembly to define and

1 prescribe certain matters with respect to the exercise of this power and
2 authority. To that end this Act is adopted to enable the accomplishment and
3 realization of the public purposes intended by Arkansas Constitution,
4 Amendment 72, and is not intended to otherwise limit in any manner the
5 exercise of the powers of counties and municipalities.

6

7 SECTION 3. Definitions.

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

9 (1) "Bonds" means bonds issued pursuant to this Act.

10 (2) "Capital improvements to or construction of public libraries"
11 in the case of municipalities, or "capital improvements to or construction of
12 county libraries, for county library services or systems," in the case of
13 counties or "capital improvements" generally, for the purposes of Arkansas
14 Constitution Amendments 30 and 38, as amended by Amendment 72, and this Act
15 mean, whether obtained by purchase, lease, construction, reconstruction,
16 restoration, improvement, alteration, repair, or other mean

17 (A) Any buildings, improvements and other physical public
18 library betterment or improvement or any preliminary plans, studies, or
19 surveys relative thereto;

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

22 (C) Any furnishings, machinery, vehicles, apparatus, or
23 equipment, which shall include, without limiting the generality of the
24 foregoing definition, the following: administrative, executive, or other
25 public library offices; computer systems, hardware and apparatus; research and
26 reading materials;

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

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

31 (5) "County" means any county in the State of Arkansas;

32 (6) "Issuer" means a municipality or a county;

33 (7) "Legislative body" means the council, board of directors,
34 board of commissioners, or similar elected governing body of a municipality;

35 (8) "Municipality" means any city having a population of not less

1 than 5,000 persons in the State of Arkansas;

2 (9) "Order" means an order entered by the County Court of a
3 County.

4 (10) "Ordinance" means an ordinance or other appropriate
5 legislative enactment of a legislative body.

6 (11) "Tax" or "Ad valorem tax" means a tax authorized for the
7 payment of bonded indebtedness in Arkansas Constitution, Amendments 30 and 38,
8 as amended by Amendment 72.

9

10 SECTION 4. Construction.

11 This Act shall be construed liberally to effectuate the legislative
12 intent and the purposes of this Act as complete and independent authority for
13 the performance of each and every act and thing herein authorized and all
14 powers herein granted shall be broadly interpreted to effectuate the intent
15 and purposes and not as a limitation of powers.

16

17 SECTION 5. Act supplemental.

18 (a) It is the specific intent of this act that the provisions of this
19 act are supplemental to other constitutional or statutory provisions which may
20 provide for the financing of capital improvements for public libraries.

21 (b) Nothing contained in this act shall be deemed to be a restriction
22 or limitation upon alternative means of financing previously available or
23 hereafter made available to municipalities or counties for the purposes set
24 forth in this act.

25

26 SECTION 6. Venue.

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

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2 SECTION 7. Bonds generally - Authorizing ordinance for Municipalities.

3 Whenever one hundred (100) or more tax paying electors of any
4 municipality shall file a petition with the Mayor, asking:

5 (i) that an ad valorem tax on real and personal property be
6 levied for capital improvements which petition shall specify a rate of
7 taxation not to exceed three (3) mills on the dollar, and

8 (ii) authorizing the legislative body of the municipality to
9 issue bonds as prescribed by this act for capital improvements to or
10 construction of a public library and to pledge all, or any part of the tax for
11 the purpose of retiring the bonds, a legislative body shall authorize the
12 issuance of the bonds by ordinance specifying the maximum principal amount of
13 bonds to be issued, and the rate of any ad valorem tax to be levied and
14 pledged to the retirement of the bonds as specified in Arkansas Constitution,
15 Amendment 30, as amended by Amendment 72.

16

17 SECTION 8. Bonds generally - Authorizing order for Counties.

18 Whenever one hundred (100) or more tax paying electors of any county
19 shall file a petition with the County Court asking:

20 (i) that an ad valorem tax on real and personal property be
21 levied for capital improvements which petition shall specify a rate of
22 taxation not to exceed three (3) mills on the dollar, and

23 (ii) authorizing the county court to issue bonds as prescribed by
24 this act for capital improvements to or construction of county libraries, for
25 county library services or systems and to pledge all, or any part of the tax
26 for the purpose of retiring the bonds, the county court shall authorize the
27 issuance of the bonds by order specifying the maximum principal amount of
28 bonds to be issued, and the rate of any ad valorem tax to be levied and
29 pledged to the retirement of the bonds as specified in Arkansas Constitution,
30 Amendment 38, as amended by Amendment 72.

31

32 SECTION 9. Bonds generally - Election to authorize issuance.

33 (a) The question of the issuance of such bonds shall be submitted to
34 the electors of the municipality or county at the general election or at a
35 special election called for that purpose as provided in the ordinance or order

1 and held in the manner provided in this act, provided, however, that no voter
2 residing within a municipality levying a maintenance tax for libraries
3 pursuant to Arkansas Constitution, Amendment 30 shall be entitled to vote on
4 the question.

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

8 (c) The ordinance or order shall set forth the form of the ballot
9 question or questions, in the form prescribed by the Arkansas Constitution,
10 Amendment 30 or Amendment 38, as amended by Amendment 72.

11 (d) Notice of the election shall be given by the clerk of the issuer by
12 one (1) publication in a newspaper having general circulation within the
13 municipality or county not less than ten (10) days prior to the election. No
14 other publication or posting of a notice by any other public official shall be
15 required.

16 (e) The election shall be held no earlier than thirty (30) days after
17 the date of adoption of the ordinance or entry of the order in which the
18 election is called.

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

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

27 (2) No other action shall be maintained to challenge the validity
28 of the bonds and of the proceedings authorizing the issuance of the bonds
29 unless suit is filed in such circuit court within thirty (30) days after the
30 date of adoption of an ordinance or entry of the order authorizing the sale of
31 the bonds.

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2 SECTION 10. Bonds generally - Terms and conditions.

3 (a) As the ordinance, order or trust indenture as authorized in this
4 act may provide, the bonds may:

5 (1) Be in registered or other form;

6 (2) Be in such denominations;

7 (3) Be exchangeable for bonds of another denomination;

8 (4) Be made payable at such places within or without the state;

9 (5) Be issued in one (1) or more series;

10 (6) Bear such date or dates;

11 (7) Mature at such time or times;

12 (8) Be payable in such medium of payment;

13 (9) Be subject to such terms of redemption; and

14 (10) May contain such other terms, covenants, and conditions,

15 including, without limitation, those pertaining to:

16 (A) The custody and application of the proceeds of the
17 bonds;

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

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

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

21 (E) The maintaining of taxes;

22 (F) The remedies on default;

23 (G) The rights, duties, and obligations of the issuer and
24 the trustee, if any, for the owners of the bonds; and

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

26 (b) All bonds and notes issued under the provisions of this act shall
27 be and are declared to be negotiable instruments within the meaning of the
28 negotiable instruments law of the state.

29

30 SECTION 11. Bonds generally - Interest rates.

31 Bonds for capital improvements issued pursuant to this act shall not
32 bear a rate of interest in excess of the rate provided in the Arkansas
33 Constitution.

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2 SECTION 12. Bonds generally - Trust indenture.

3 (a) The ordinance or order authorizing the bonds may provide for the
4 execution by the chief executive officer of the issuer of a trust indenture
5 which defines the rights of the owners of the bonds and provides for the
6 appointment of a trustee for the owners of the bonds.

7 (b) The trust indenture may provide for the priority between and among
8 successive issues and may contain any of the provisions set forth in Section
9 10 hereof and any other terms, covenants, and conditions that are deemed
10 desirable.

11

12 SECTION 13. Bonds generally - Contents.

13 It shall be plainly stated on the face of each bond that it has been
14 issued under the provisions of this act and either Arkansas Constitution,
15 Amendment 30 in the case of municipalities, or Amendment 38, in the case of
16 counties, both as amended by Amendment 72.

17

18 SECTION 14. Bonds generally - Execution.

19 The bonds shall be executed in the manner provided by the Registered
20 Public Obligations Act of Arkansas, § 19-9-401, et seq., as that act may be
21 amended.

22

23 SECTION 15. Bonds generally - Sale.

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

27

28 SECTION 16. Bonds generally - Pledge of taxes generally.

29 The bonds shall be secured by, and contain a pledge of, any tax or
30 combination of taxes authorized to pay the bonded indebtedness and shall be
31 payable solely from the taxes authorized by the Arkansas Constitution,
32 Amendment 30 or Amendment 38, as amended by Amendment 72, and this act.
33 However, the issuer is not prohibited from using other taxes, revenues, or
34 receipts to retire the bonds.

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

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

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

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

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

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

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

22 (e) Notwithstanding any other provision of this act, a tax approved by
23 the voters for the purpose of paying bonded indebtedness shall not be reduced
24 or diminished, nor shall it be used for any other purpose than to pay
25 principal of, premium or interest on, and the reasonable fees of a trustee or
26 paying agent, so long as the bonded indebtedness shall remain outstanding and
27 unpaid.

1 (f) Notwithstanding any other provision of this act, a tax approved by
2 the voters and levied for the purpose of paying bonded indebtedness authorized
3 pursuant to this act by a county shall not be levied against any real or
4 personal property which is taxed by a municipality for the maintenance of a
5 public library pursuant to Arkansas Constitution, Amendment 30, as amended by
6 Amendment 72; provided, however, that no tax levied by a county for the
7 purpose of paying bonded indebtedness authorized pursuant to this act shall
8 ever be diminished or reduced while such bonds are outstanding if a
9 municipality within the county approves such a maintenance tax after the date
10 on which the voters of a county approve a tax for the purpose of paying bonded
11 indebtedness authorized pursuant to this act.

12

13 SECTION 18. Bonds generally - Successive issues.

14 There may be successive bond issues for the purpose of financing the
15 same capital improvements.

16

17 SECTION 19. Bonds generally - Mortgage lien.

18 (a) The ordinance, order or trust indenture authorized in Section 7,
19 Section 8 or Section 10 of this act may, but need not, impose a foreclosable
20 mortgage lien upon the capital improvements financed with the proceeds of
21 bonds issued under this act.

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

25 (1) Pertaining to the release of all or part of the capital
26 improvements from the mortgage lien;

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

29 (3) Authorizing any owner of bonds, or a trustee on behalf of all
30 owners, either at law or in equity, to enforce the mortgage lien and, by
31 proper suit, compel the performance of the duties of the officials of the
32 issuer set forth in this act or in the ordinance, order or trust indenture
33 authorizing and securing the bonds.

34 (c) References in this section to mortgage lien shall include a
35 security interest in any personal property constituting the capital

1 improvements, or part thereof, financed with the proceeds of bonds issued
2 under this act.

3

4 SECTION 20. Bonds generally - Liability.

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

10

11 SECTION 21. Bonds generally - Tax exemption.

12 Bonds and notes issued under the provisions of this act and the income
13 thereon shall be exempt from all state, county, and municipal taxes,
14 including, without limitation, all income, property, and inheritance taxes.

15

16 SECTION 22. Bonds generally - Interim borrowing.

17 (a) If the issuance of bonds is authorized in accordance with the
18 provisions of this act, a municipality or county is authorized to obtain
19 interim financing pending the delivery of all or any part of the bonds from
20 such sources and upon such terms as the municipality or the county shall
21 determine.

22 (b) As evidence of any indebtedness so incurred, the municipality or
23 the county may execute and deliver its promissory note, or notes, and pledge
24 to the payment thereof the tax or taxes approved by the voters to be pledged
25 to the bonds, and to otherwise secure the notes as bonds issued under this act
26 may be secured.

27 (c) The notes may bear such date or dates, may mature at such time or
28 times, not exceeding three (3) years from their respective dates, may bear
29 interest at such rate or rates, may be in such form, may be executed in such
30 manner, may be payable at such place or places, may contain such provisions
31 for prepayment prior to maturity and may contain such other terms, or
32 covenants, and conditions as the ordinance or order may provide which are not
33 inconsistent with the provisions of this act.

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2 SECTION 23. Refunding bonds.

3 (a) Bonds may be issued under this act for the purpose of refunding any
4 outstanding bonds issued hereunder.

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

7 (2) If sold for cash, the proceeds may be either applied to the
8 payment of the obligations refunded or deposited in irrevocable trust for the
9 retirement thereof either at maturity or on an authorized redemption date.

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

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

19 (e) (1) Bonds may also be issued under the provisions of this act for
20 the purpose of refunding any outstanding bonds issued pursuant to Arkansas
21 Constitution, Amendment 62, whether or not issued prior or subsequent to the
22 effective date of this act, to finance capital improvements if the question of
23 the issuance of the refunding bonds is submitted to the electors in the manner
24 provided in Section 9 of this act.

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

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

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2 SECTION 24. Coordination of City and County Libraries.

3 Nothing herein shall be construed as preventing coordination of the
4 services of a city public library and a county public library, the services of
5 libraries of different cities, or the services of libraries of different
6 counties.

7

8 SECTION 25. Separability.

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

15

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

19

20 SECTION 27. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25

26 SECTION 28. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28

29 SECTION 29. Emergency Clause.

30 It is hereby found and declared that by virtue of adoption of Arkansas
31 Constitution, Amendment 72, that there are now no provisions for
32 municipalities and counties to conduct elections or otherwise implement the
33 provisions of said amendment and that municipalities and counties have an
34 immediate and pressing need for borrowing funds through the issuance of bonds
35 authorized by Amendment 30 and Amendment 38, as amended by Amendment 72,

1 attributable in substantial part to the lack of authority prior to the
2 adoption of Amendment 72, for the levy and pledge of ad valorem taxes
3 sufficient to finance the construction of capital improvements to or for
4 libraries in the State of Arkansas. Therefore, an emergency is hereby
5 declared to exist and this act being immediately necessary for the protection
6 of the public peace, health and safety, shall take effect and be in full
7 force, immediately upon its passage and approval.

8 */s/ Senators Bradford and Bookout*

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