

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

HOUSE BILL 1825

4 By: Representatives G. Hendrix and Simmons

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## For An Act To Be Entitled

8 "THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION  
9 POOLED LOAN SECURITIZATION ACT OF 1995; AND FOR OTHER  
10 PURPOSES."

11

## Subtitle

12 "THE ARKANSAS SOIL AND WATER  
13 CONSERVATION COMMISSION POOLED LOAN  
14 SECURITIZATION ACT OF 1995."  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. Definitions. As used throughout this act, unless the  
20 context otherwise requires:

21 (1) "Commission" means the Arkansas Soil and Water Conservation  
22 Commission;

23 (2) "Fairness opinion" means a written opinion by the Commission's  
24 financial advisor stating that the proposed transaction is structured in a  
25 commercially reasonable manner and that the Commission is receiving fair,  
26 adequate and equitable consideration in exchange for the sale or pledge of  
27 the loans;

28 (3) "Financial advisor" means any entity, either private or  
29 governmental, that routinely provides advice to governmental entities  
30 regarding their capital improvement and financial needs;

31 (4) "Investors" means any individual, institution or other entity that  
32 acquires an interest in loans to be sold or pledged by the Commission;

33 (5) "Loans" means those obligations owed to and owned by the  
34 Commission pursuant to those financial assistance programs that the  
35 Commission may administer from time to time;

1 (6) "Pledge" means to pledge, encumber, mortgage, hypothecate or  
2 otherwise grant a security interest in;

3 (7) "Pool" means to gather together into a single portfolio;

4 (8) "Sell" means to grant, transfer, convey, dispose of or otherwise  
5 alienate;

6 (9) "Transaction enhancement" means any form of insurance, any  
7 contractual provision, any fund or any other obligation that may be supplied  
8 by either the Commission or any third party, which shall serve to enhance the  
9 creditworthiness of the pool.

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11 SECTION 2. (a) The Commission is authorized to pledge or sell loans  
12 or undivided interests in pools of loans to investors in consideration for  
13 the payment to the Commission of cash or cash equivalents.

14 (b) The Commission is further authorized to:

15 (1) Sell the loans or undivided interests in pools of loans to  
16 investors at par, a premium or a discount;

17 (2) Pledge the loans or undivided interests in pools of loans to  
18 investors as security for repayment of Commission indebtedness to the  
19 investors; or,

20 (3) Otherwise use the loans or undivided interests in pools of  
21 loans to collateralize or secure other financial relationships with investors  
22 as the Commission may deem appropriate.

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24 SECTION 3. The Commission is authorized to supplement its sale, pledge  
25 or other use of the loans with any form of transaction enhancement that the  
26 Commission may deem appropriate and that the financial advisor deems fair and  
27 reasonable. Specifically, the Commission may:

28 (1) Establish a cash reserve against which defaulting loans may be  
29 offset;

30 (2) Agree to replace defaulted loans with other loans that the  
31 Commission subsequently originates or otherwise possesses;

32 (3) Agree to repurchase defaulted loans;

33 (4) Sell to investors loans having a collective face value in excess  
34 of the par value of the consideration received from the pool sale or pledge  
35 in order to provide a pool of loans from which defaulting loans can be offset

1 or replaced; or

2 (5) Purchase or provide any other form of transaction enhancement as  
3 the Commission may deem necessary.

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5 SECTION 4. Prior to the sale, pledge or other use of the loans or  
6 undivided interests in pools of loans the Commission shall retain the  
7 services of a financial advisor who shall render prior to the closing of the  
8 contemplated transaction a fairness opinion, which shall verify that the  
9 loans are properly valued, that the transaction enhancements, if any, are not  
10 excessive or unreasonable, and that the terms and conditions of the  
11 contemplated transaction are fair and reasonable.

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13 SECTION 5. (a) In no event shall the Commission obligate or pledge  
14 the full faith and credit of the State of Arkansas to secure any obligation  
15 sold, pledged or placed with investors under this act.

16 (b) The Commission shall not pledge its full faith and credit to  
17 secure any obligation sold, pledged or placed with investors under this  
18 chapter, provided, however, that the Commission may obligate itself to honor  
19 those financial covenants and transaction enhancements that may be associated  
20 with the sale or pledge of the loans.

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22 SECTION 6. The Commission is authorized to:

23 (1) Sell participation certificates or other indicia of ownership to  
24 investors that shall evidence the investor's ownership of undivided interests  
25 in loans or pools of the loans sold pursuant to the provisions of this act;

26 (2) Sell bonds to investors that shall evidence the Commission's  
27 obligation to repay principal, interest and redemption premium, if any, to  
28 those investors purchasing bonds secured by the loans pursuant to the  
29 provisions of this act; or

30 (3) Sell or place any other form of security involving or secured by  
31 the loans or pools that the Commission may structure or determine to be  
32 appropriate.

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34 SECTION 7. The Commission is authorized to retain the services of bond  
35 counsel, financial advisors, underwriters, investment bankers, indenture

1 trustees, portfolio servicers and other professionals in structuring,  
2 documenting, selling and servicing the loans and securities contemplated to  
3 be issued under this act.

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5 SECTION 8. (a) The Commission is authorized to use the proceeds  
6 received from the sale or pledge of the loans:

7 (1) To fund water, sewer, solid waste, flood control, drainage,  
8 water pollution abatement, prevention or control, wetlands, irrigation, or  
9 other projects that the Commission may fund under the financial assistance  
10 programs that it administers from time to time;

11 (2) To provide the matching funding for programs sponsored by  
12 state or federal governmental agencies or entities that provide assistance  
13 for the types of projects listed in (1); or,

14 (3) For any other lawful purpose that the Commission may  
15 identify from time to time.

16 (b) All proceeds from the sale or pledge of the loans or pools of  
17 loans under this act shall be deposited into the Arkansas Water Development  
18 Fund, the Water Resources and Waste Disposal Revolving Loan Fund, Water,  
19 Sewer and Solid Waste Systems Revolving Fund, Arkansas Water Resources Cost  
20 Share Revolving Fund, or any other fund or account or combination of funds or  
21 accounts that the Commission shall direct.

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23 SECTION 9. The Commission is authorized and empowered to sell or  
24 pledge single or multiple series or pools of loans with those amortization  
25 and payment schedules and other terms and conditions that the Commission may  
26 specify from time to time, including, without limitation, the establishment  
27 of debt service reserve funds, capitalized interest funds, cost of issuance  
28 funds, defaulted loan reserve accounts and all other forms of accounts or  
29 funds that the Commission may deem appropriate.

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31 SECTION 10. All provisions of this act of a general and permanent  
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
33 Code Revision Commission shall incorporate the same in the Code.

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35 SECTION 11. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
2 other provisions or applications of the act which can be given effect without  
3 the invalid provision or application, and to this end the provisions of this  
4 act are declared to be severable.

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6       SECTION 12. All laws and parts of laws in conflict with this act are  
7 hereby repealed.

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