

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

# A Bill

SENATE BILL 253

4 By: Senators Walters, Scott, Gwatney, Boozman, Hunter, Walker, Fitch,  
5 Cassady, Edwards, Hardin, and Hoofman

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7  
8

## For An Act To Be Entitled

9 *"AN ACT AUTHORIZING THE ARKANSAS DEVELOPMENT FINANCE*  
10 *AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS ON BEHALF OF*  
11 *THE ARKANSAS BOARD OF CORRECTION AND COMMUNITY PUNISHMENT*  
12 *IN THE TOTAL PRINCIPAL AMOUNT OF NOT EXCEEDING ONE HUNDRED*  
13 *MILLION DOLLARS (\$100,000,000) FOR THE PURPOSE OF PRISON*  
14 *CONSTRUCTION; AND FOR OTHER PURPOSES."*

15  
16

## Subtitle

17 *"AUTHORIZES ADFA ON BEHALF OF THE BOARD*  
18 *OF CORRECTION AND COMMUNITY PUNISHMENT*  
19 *TO ISSUE GENERAL OBLIGATION BONDS IN*  
20 *TOTAL PRINCIPAL AMOUNT OF NOT EXCEEDING*  
21 *\$100,000,000 FOR THE PURPOSE OF PRISON*  
22 *CONSTRUCTION."*

23

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

25

26 SECTION 1. This act may be referred to and cited as the "Prison  
27 Construction Act of 1995".

28

29 SECTION 2. *The Arkansas Development Finance Authority, on behalf of*  
30 *the Arkansas Board of Correction and Community Punishment and of the State of*  
31 *Arkansas is hereby authorized, subject to approval of the voters at the 1996*  
32 *general election, to issue bonds and to have bonds outstanding which shall be*  
33 *general obligations of the State of Arkansas, to be known as Arkansas Prison*  
34 *Bonds in the total principal amount of not exceeding one hundred million*  
35 *dollars (\$100,000,000), for the purposes set forth herein.*

1

2 SECTION 3. In this act:

3 (a) "Authority" means the Arkansas Development Finance Authority.

4 (b) "Board" means the Board of Correction and Community Punishment.

5 (c) "Bonds" means Arkansas Prison Bonds issued pursuant to this act.

6 (d) "Debt service" means principal, interest and redemption premiums,  
7 if any.

8

9 SECTION 4. (a) The bonds shall be issued whether or not the interest  
10 is

11 subject to Federal income taxation, in series, as set forth herein, in  
12 amounts

13 sufficient to finance construction of additional prison facilities for  
14 housing inmates, with the respective series to be designated in alphabetical  
15 order and/or by the year in which issued.

16 (b) The bonds of each series shall have such date as the *Authority*  
17 shall determine and shall mature semiannually or annually (or be subject to  
18 mandatory sinking fund redemption) over a period ending not later than thirty  
19 (30) years after the date of the bonds of each series so as to provide annual  
20 debt service of approximately equal amounts (insofar as practicable) each  
21 year

22 throughout the term of the bonds, as determined by the *Authority*. Pending  
23 the

24 issuance of bonds hereunder, the *Authority* may issue temporary notes, to be  
25 exchanged for or paid from the proceeds of bonds at such time as bonds may be  
26 issued.

27 (c) The bonds of each series shall bear interest at the rate or rates  
28 accepted by the *Authority* at the sale of the bonds. Interest shall be  
29 payable

30 at such times and in such manner as the *Authority* shall determine, including  
31 the utilization of zero coupon or capital appreciation bonds.

32 (d) The bonds may be issued in the form of coupon bonds, payable to  
33 bearer, or as bonds registered as to principal only with interest coupons, or  
34 as bonds registered as to both principal and interest without coupons; may be  
35 in such denominations; and may be made exchangeable for bonds of another form

1 or denomination, bearing the same rate of interest and date of maturity;  
2 principal and interest may be made payable at such places within or without  
3 the State; may be made subject to redemption prior to maturity in such manner  
4 and for such redemption prices; and may contain such other terms and  
5 conditions, all as the *Authority* shall determine.

6 (e) The bonds of each series shall have all the qualities of  
7 negotiable instruments under the laws of the State of Arkansas.

8  
9 SECTION 5. Bonds issued under this act shall be issued for the purpose  
10 of *acquiring land, if necessary and constructing and equipping* additional  
11 prison facilities for housing inmates, and the proceeds of any bonds issued  
12 under this act shall be applied for the payment of those *acquisition,*  
13 *construction, and equipment* costs or the refunding of bonds outstanding as  
14 authorized in this act.

15  
16 SECTION 6. (a) All bonds issued hereunder shall be authorized by  
17 resolution of the *Authority*. Each resolution shall contain such terms,  
18 covenants and conditions as are deemed desirable, including, without  
19 limitation, those pertaining to the establishment and maintenance of funds  
20 and  
21 accounts, to the deposit and investment of revenues and of bond proceeds and  
22 to the rights and obligations of the State, its officers and officials, the  
23 *Authority, the board* and the holders and registered owners of the bonds. All  
24 bonds issued under this act shall be on a parity as to security. The  
25 resolution of the *Authority* may provide for the execution and delivery by the  
26 *Authority* of a trust indenture or trust indentures, with a bank or banks  
27 located within or without the State, containing any of the terms, covenants  
28 and conditions referred to above. The trust indenture or trust indentures  
29 shall be binding upon the State, and its officers and officials, to the  
30 extent set forth in this act.

31 (b) Any resolution or trust indenture adopted or executed under this  
32 act may provide for the retirement and defeasance of the bonds by the  
33 depositing in trust of cash or investments maintained for that purpose, and  
34 when the provisions of such resolution or trust indenture are complied with  
35 such bonds being refunded shall not be deemed to be bonds outstanding for the

1 purposes of this act.

2

3 SECTION 7. Each bond shall be signed with the facsimile signatures of  
4 the Governor, the Secretary of State and the chairman of the *Authority* and by  
5 the manual or facsimile signature of the Treasurer of State or by a deputy of  
6 the Treasurer of State, and shall have affixed or imprinted thereon the Great  
7 Seal of the State. Interest coupons attached to the bonds, if any, shall be  
8 signed with the facsimile signature of the Treasurer of State. Delivery of  
9 bonds and coupons so executed shall be valid, notwithstanding any change in  
10 persons holding such offices occurring after the bonds have been executed.

11

12 SECTION 8. The bonds may be sold in such manner, either at public or  
13 private sale, and upon such terms as the *Authority* shall determine to be  
14 reasonable and expedient for effectuating the purposes of *this act*. The  
15 bonds  
16 may be sold at such prices as the *Authority* may accept, including, but not  
17 limited to, sale at a discount or a premium.

18 (a) If the bonds are sold at public sale, such public sale shall be on  
19 sealed bids, after notice published by the chairman of the *Authority* for at  
20 least one (1) insertion not less than twenty (20) days before the date of  
21 sale  
22 in a newspaper published in the City of Little Rock, Arkansas, and in a  
23 financial newspaper or journal published in the Borough of Manhattan, City  
24 and  
25 State of New York, which notice shall contain such other terms and provisions  
26 as the *Authority* determines to be desirable. The *Authority* shall award the  
27 sale to the bidder offering to purchase the bonds at a price which results in  
28 the lowest net interest cost or true interest cost to the State of Arkansas  
29 (determined by computing the total interest cost from date of the issue to  
30 maturity, and deducting therefrom any premium bid and adding thereto the  
31 amount of any discount bid); provided, however, the *Authority* shall reserve  
32 the right to reject all bids tendered at the public sale.

33 (b) If the bonds are sold at a private or negotiated sale, within  
34 ninety (90) days following the close of the bond issue, the *Authority* shall  
35 file with the Legislative Council a written report of the details of the bond

1 sale. The report shall include a listing of the firms to whom the sale was  
2 made, the rate or rates of interest paid for the bonds, the underwriting fee  
3 or discount and other details of the underwriting of the bonds.

4 (c) The *Authority* may employ administrative agents, fiscal agents and  
5 legal counsel and may pay them reasonable compensation out of the proceeds of  
6 the bonds. The costs of publication of notices, bond printing, official  
7 statements, other documents and other costs associated with the sale,  
8 issuance

9 and delivery of the bonds shall be paid from the proceeds of the bonds.

10

11 SECTION 9. (a) The proceeds from the sale of the bonds shall be  
12 deposited by the *Authority*, as received, into trust funds in the State  
13 Treasury, to accomplish the purposes of this act in amounts or portions as  
14 may be set forth in the resolution or trust indenture authorizing or securing  
15 the bonds.

16 (b) The Treasurer of State is authorized and directed to establish  
17 separate accounts within the funds to correspond to the applicable series of  
18 bonds. In addition, there may be created in the State Treasury such other  
19 funds, and accounts as the *Authority* may determine in the resolution or  
20 trust indenture to be necessary to accomplish the purposes of this act.

21

22 SECTION 10. The bonds shall be direct general obligations of the State  
23 of Arkansas, for the payment of the debt service on which the full faith and  
24 credit of the State of Arkansas are hereby irrevocably pledged so long as any  
25 such bonds are outstanding. The bonds shall be payable from *the taxes levied*  
26 *by this act and* general revenues of the State and such amount of general  
27 revenues as is necessary is hereby pledged to the payment of debt service on  
28 the bonds and shall be and remain pledged for such purposes.

29

30 SECTION 11. (a) *Without in any way limiting the general obligation of*  
31 *the State of Arkansas to repay the bonds, the taxes levied by this act are*  
32 *hereby specifically pledged to the payment of the debt service on the bonds.*

33 (b) *The Prison Construction Fund is hereby created upon the books of*  
34 *the State Treasurer, State Auditor and Chief Fiscal Officer of the State.*

35 (c) *On or before commencement of each fiscal year, the Authority in*

1 consultation with the Chief Fiscal Officer shall determine the estimated  
2 amount required for payment of debt service due on each series of bonds  
3 issued and outstanding under this act during such fiscal year, and shall  
4 certify such estimated amount to the State Treasurer. The State Treasurer  
5 shall then make transfers from the Prison Construction Fund to the trustees  
6 for each series of bonds, in such amounts and at such times as shall be  
7 specified in the indentures, to pay the maturing debt service on each series  
8 of bonds issued and outstanding under this Act. The State Treasurer shall  
9 make such additional transfers as the Authority shall certify as being  
10 required under the indentures to enable the Authority to establish and  
11 thereafter maintain with the trustee for each series of bonds a reserve or  
12 reserves for payment of debt service on each series of bonds.

13 (d) The obligation to make transfers from the Prison Construction Fund  
14 for the payment of debt service on, and, if applicable, a reserve for, each  
15 series of bonds shall constitute a first charge against amounts on deposit  
16 therein. Funds on deposit in the Prison Construction Fund in excess of the  
17 amounts required to pay debt service on the bonds and for a reasonable  
18 reserve may be used for the redemption of bonds prior to maturity in the  
19 manner and in accordance with the provisions pertaining to redemption prior  
20 to maturity, as set forth in the trust indentures authorizing or securing  
21 each series of bonds.

22 (e) In the event that there are insufficient amounts in the Prison  
23 Construction Fund to pay the debt service on bonds issued and outstanding  
24 under this Act, or to fund any necessary reserves at the required level, the  
25 State Treasurer shall, to the extent permitted by law, transfer additional  
26 amounts thereto from the general revenues of the State.

27

28 SECTION 12. (a) If approved by the electors pursuant to this act,  
29 there is hereby levied an additional excise tax of one-eighth of one percent  
30 (1/8 of 1%) upon all taxable sales of property and services subject to the  
31 tax levied by the Arkansas Gross Receipts Act (Arkansas Code 26-52-101 et  
32 seq.), and such tax shall be collected, reported, and paid in the same manner  
33 and at the same time as is prescribed by law for the collection, reporting  
34 and payment of all other Arkansas gross receipts taxes.

35 (b) If approved by the electors pursuant to this act, there is hereby

1 levied an additional excise tax of one-eighth of one percent (1/8 of 1%) upon  
2 all tangible personal property subject to the tax levied by the Arkansas  
3 Compensating Tax Act (Arkansas Code 26-53-101 et seq.), and such tax shall be  
4 collected, reported, and paid in the same manner and at the same time as is  
5 prescribed by law for the collection, reporting and payment of Arkansas  
6 compensating taxes.

7 (c) The Chief Fiscal Officer of the State shall certify to the State  
8 Treasurer the amount of moneys generated by the additional one-eighth of one  
9 percent (1/8 of 1%) sales and use tax and the same shall be deposited as  
10 special revenues into the Prison Construction Fund.

11

12 SECTION 13. The taxes levied by the people pursuant to this act shall  
13 not become effective until after a majority of the qualified electors of the  
14 state approve the same and the issuance of the bonds authorized by this act.

15 The effective date of the taxes approved by the voters shall be as

16 follows:(c) a. If no election challenge is filed within thirty (30)  
17 days after the election, the tax shall become effective on the first day of  
18 the second calendar month following the election.

19 b. In the event of an election contest, the tax shall be collected as  
20 prescribed in subsection (a) of this section unless enjoined by court order.

21

22 SECTION 14. TERMINATION OF TAX.

23 a. The taxes levied by the people pursuant to this act shall expire at  
24 the earlier of five (5) years after the taxes go into effect or whenever  
25 there are no bonds outstanding to which the tax collections are pledged. Any  
26 surplus funds remaining after the bonds are retired shall be expended for the  
27 maintenance and operation of the Department of Correction and Community  
28 Service.

29 b. In order to provide for the accomplishment of the administrative  
30 duties of the Director of the Department of Finance and Administration and to  
31 protect the owners of the bonds, the tax shall be abolished on the first day  
32 of the calendar month subsequent to the expiration of thirty (30) days from  
33 the date there is filed with the Director a written statement signed by the  
34 Governor and by the trustee for the bondholders, if a trustee is serving in  
35 such capacity, identifying the tax and the bonds, wherein either:

1           (A) *The trustee certifies that the trustee has or will have*  
2 *sufficient funds set aside to pay the principal of and interest on the bonds*  
3 *when due at maturity or at redemption prior to maturity and the Governor*  
4 *certifies that the tax is not pledged to any other bonds; or*

5           (B) *The Governor certifies that there are no longer any bonds*  
6 *outstanding payable from tax collections.*

7  
8           SECTION 15. All bonds issued under this act, and interest thereon,  
9 shall be exempt from all taxes of the State of Arkansas, including income,  
10 inheritance and property taxes. The bonds shall be eligible to secure  
11 deposits of all public funds, and shall be legal for investment of municipal,  
12 county, bank, fiduciary, insurance company, and trust funds.

13  
14           SECTION 16. This act shall constitute a contract between the State of  
15 Arkansas and the holders and registered owners of all bonds issued hereunder  
16 which shall never be impaired, and any violation of its terms, whether under  
17 purported legislative authority or otherwise, shall be enjoined by the courts  
18 at the suit of any bondholder or of any taxpayer. The courts shall, in like  
19 suit against the *Authority*, the Treasurer of State, or other appropriate  
20 officer or official of the State, prevent a diversion of any revenues pledged  
21 hereunder and shall compel the restoration of diverted revenues, by  
22 injunction or mandamus. Also and without limitation as to any other  
23 appropriate remedy at law or in equity, any bondholder may, by an appropriate  
24 action, including without limitation, injunction or mandamus, compel the  
25 performance of all covenants and obligations of the State, its officers and  
26 officials, hereunder.

27  
28           SECTION 17. This act shall not create any right of any character and  
29 no  
30 right of any character shall arise under or pursuant to it, unless and until  
31 the first series of bonds authorized by this act shall have been sold and  
32 delivered.

33  
34           SECTION 18. (a) No bonds shall be issued under this act except by and  
35 with the consent of a majority of the qualified electors of the State voting



1 on the question at the general election of 1996. Notice thereof shall be  
2 published by the Secretary of State in a newspaper of general circulation in  
3 the State at least sixty (60) days prior to the general election, and notice  
4 thereof shall be mailed to the county board of election commissioners and the  
5 sheriff of each county at least sixty (60) days prior to the general  
6 election. It shall not be necessary to publish this act itself, but the  
7 notice shall  
8 state that it is issued for the purpose of having the people vote on  
9 substantially the following question: "*Shall the Arkansas Development*  
10 *Finance Authority* be authorized to issue general obligation bonds under the  
11 authority of the Prison Construction Act of 1995 in the total principal  
12 amount of not exceeding *one hundred million dollars (\$100,000,000)*, in series  
13 from time to time, which bonds shall be secured by a pledge of the full faith  
14 and *credit of the State of Arkansas?*" *If the issuance of such bonds is*  
15 *approved, the following taxes will be levied and the proceeds thereof pledged*  
16 *to pay debt service on the bonds: one dollar and fifty cents (\$1.50) on each*  
17 *gallon of spirituous liquor sold or offered for sale in this state; two*  
18 *dollars and fifty cents (\$2.50), proportionately, on each barrel of thirty-*  
19 *two (32) gallons of beer having an alcohol content of five percent (5%) or*  
20 *less by weight sold or offered for sale in this state; and seventy-five cents*  
21 *(\$0.75) per thousand cigarettes sold in this state. The proceeds of the*  
22 *bonds shall be used for the purpose of constructing and equipping additional*  
23 *prison facilities, or improvements to existing facilities, and, if necessary,*  
24 *the acquisition of land for these purposes."*

25 (b) The title of this act shall be the ballot title, and there shall  
26 be printed on the ballot the proposition as stated above, and the following:

27 *FOR Issuance of Prison Construction General Obligation Bonds; the*  
28 *levy of an additional one-eighth one percent (1/8 of 1%) sales and use tax;*  
29 *these additional taxes to be used to help retire the bonds...../\_\_\_/*

30 *AGAINST Issuance of Prison Construction General Obligation Bonds; the*  
31 *levy of an additional one-eighth of one percent (1/8 of 1%) sales and use*  
32 *tax; these additional taxes to be used to help retire the bonds...../\_\_\_/*

33 (c) The county boards of election commissioners of the several  
34 counties of this state shall hold and conduct the election, and each such  
35 board shall take such action with respect to the appointment of election

1 officials and such other matters as the law requires; and the vote shall be  
2 canvassed and the result thereof declared in each county by such several  
3 county boards. The results shall within ten (10) days after the date of the  
4 election be certified by the county boards to the Secretary of State who  
5 shall forthwith tabulate all returns so received by him and certify to the  
6 Governor the total vote for and against the proposition submitted as in this  
7 section provided.

8 (d) The result of the election shall be proclaimed by the Governor by  
9 publication one time in a newspaper published in the City of Little Rock,  
10 Arkansas, and the result as proclaimed shall be conclusive unless attacked in  
11 the courts within thirty (30) days after the date of such publication.

12

13 SECTION 19. If a majority of the qualified electors voting on the  
14 proposition shall vote for the issuance of the bonds, the *Authority* shall  
15 proceed with the sale and the issuance of the bonds as provided in this act.  
16 If a majority of the qualified electors voting on the proposition vote  
17 against the issuance of the bonds, none of the bonds authorized by this act  
18 shall ever be sold and issued, and all provisions of this act shall be of no  
19 further effect.

20

21 SECTION 20. (a) Bonds may also be issued for the purpose of  
22 refunding,  
23 either at maturity or in advance of maturity, any bonds issued under this  
24 act.  
25 Such refunding bonds may either be sold or delivered in exchange for the  
26 bonds  
27 being refunded. If sold, the proceeds may either be applied to the payment  
28 of  
29 the bonds being refunded or deposited in trust and there maintained in cash  
30 or  
31 investments for the retirement of the bonds refunded, as shall be specified  
32 by  
33 the *Authority* and the authorizing resolution or trust indenture securing such  
34 refunding bonds. The authorizing resolution or trust indenture securing the  
35 refunding bonds may provide that the refunding bonds shall have the same

1 security for their payment as provided for the bonds being refunded.  
2 Refunding bonds shall be sold and secured in accordance with provisions of  
3 this act pertaining to the sale and security of the bonds.

4 (b) In computing bonds outstanding for the purpose of section 2  
5 hereof,  
6 there shall be deducted from the amount of bonds outstanding the amounts of  
7 moneys and investments credited to or on deposit for bonds outstanding which  
8 is specifically designated for the retirement of such bonds.

9 (c) If the *Authority* causes direct government obligations of the  
10 United  
11 States to be placed irrevocably in escrow in an amount calculated to be  
12 sufficient to pay principal and interest on outstanding bonds issued by the  
13 *Authority* as they mature or shall have been irrevocably called for prior  
14 redemption, the amounts of money and investments credited to or on deposit  
15 for  
16 the payment of such outstanding bonds shall be deducted from the amount of  
17 outstanding bonds in computing bonds outstanding for the purpose of Section 2  
18 hereof. Bonds for which direct government obligations of the United States  
19 have been so deposited will no longer be deemed to be outstanding and the  
20 requirements of this act with respect to the bonds will be discharged and of  
21 no further force and effect.

22  
23 SECTION 21. Any moneys held in any fund created under this act shall  
24 be  
25 invested by the State Board of Finance to the full extent practicable pending  
26 disbursement for the purposes intended. Notwithstanding any other provision  
27 of law, such investments shall be in accordance with the terms of the  
28 resolution or trust indenture.

29  
30 SECTION 22. If, for any reason any section or provision of this act  
31 shall be held to be unconstitutional or invalid for any reason, such holding  
32 shall not affect the remainder of this act, but this act, insofar as it is  
33 not  
34 in conflict with the Constitution of this State or the Constitution of the  
35 United States, shall be permitted to stand, and the various provisions of

1 this  
2 act are hereby declared to be severable for that purpose. All cases  
3 involving the validity of this act or any portion thereof, or in any way  
4 arising under this act or involving the bonds issued hereunder, shall be  
5 deemed of public interest and shall be advanced by all courts and heard as a  
6 preferred cause, and all appeals from judgments or decrees rendered in such  
7 cases must be taken within thirty (30) days after the rendition of such  
8 judgment or decree.

9  
10 SECTION 23. (a) This act shall be liberally construed to accomplish  
11 the purposes thereof. This act shall constitute the sole authority necessary  
12 to accomplish the purposes hereof, and to this end it shall not be necessary  
13 that the provisions of other laws pertaining to the development of public  
14 facilities and properties and the financing thereof be complied with.

15 (b) This act shall be interpreted to supplement existing laws  
16 conferring rights and powers upon the board, and the rights and powers set  
17 forth herein shall be regarded as alternative methods for the accomplishment  
18 of the purposes of this act.

19  
20 SECTION 24. All provisions of this act of a general and permanent  
21 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
22 Code Revision Commission shall incorporate the same in the Code.

23  
24 SECTION 25. All laws and parts of laws in conflict with this act are  
25 hereby repealed.

26  
27 */s/Walters et al*  
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***As Engrossed: 3/1/95 3/8/95 3/10/95***

**SB 253**

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