

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H2/19/99 H3/1/99 S3/24/99

A Bill

HOUSE BILL 1500

5 By: Representative Courtway
6
7

For An Act To Be Entitled

9 "AN ACT TO AUTHORIZE THE ARKANSAS STATE HIGHWAY
10 COMMISSION TO ISSUE STATE OF ARKANSAS FEDERAL HIGHWAY
11 GRANT ANTICIPATION AND TAX REVENUE BONDS IN A TOTAL
12 PRINCIPAL AMOUNT NOT TO EXCEED FIVE HUNDRED SEVENTY-
13 FIVE MILLION DOLLARS (\$575,000,000) FOR THE PURPOSES
14 OF CONSTRUCTING AND RENOVATING ROADS AND HIGHWAYS FOR
15 THE CITIZENS OF THE STATE OF ARKANSAS; AUTHORIZING
16 THAT THE REPAYMENT OF THE BONDS BE GUARANTEED BY THE
17 FULL FAITH AND CREDIT OF THE STATE; PRESCRIBING THE
18 TERMS AND CONDITIONS OF THE ISSUANCE OF SUCH BONDS;
19 DESCRIBING THE SOURCES OF REPAYMENT OF THE BONDS;
20 PROVIDING FOR A STATEWIDE ELECTION ON THE QUESTION OF
21 ISSUING SUCH BONDS; PRESCRIBING OTHER MATTERS
22 PERTAINING THERETO; DECLARING AN EMERGENCY; AND FOR
23 OTHER PURPOSES. "

Subtitle

24
25 "ARKANSAS HIGHWAY FINANCING ACT OF 1999. "
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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31 SECTION 1. TITLE. LEGISLATIVE FINDINGS.

32 (a) This Act may be referred to and cited as the "Arkansas Highway
33 Financing Act of 1999."

34 (b) The General Assembly of the State of Arkansas has determined that
35 there is an immediate need for highway improvements as defined herein
36 throughout the State of Arkansas in order to provide for the health, safety

1 and welfare of its citizens and to promote economic development within the
2 state. The General Assembly has determined that current funding sources for
3 highway improvements are inadequate to meet the needs of the state and that
4 the best way to accomplish such improvements expeditiously is through the
5 issuance of federal highway grant anticipation and tax revenue bonds to
6 finance such highway improvements.

7 (c) The General Assembly has further determined that the bonds should
8 be payable from certain designated revenues, including federal highway
9 assistance funding and the proceeds of an increase in the excise tax on diesel
10 fuel and that the repayment of such bonds should also be guaranteed by the
11 full faith and credit of the state.

12
13 SECTION 2. DEFINITIONS. The following terms, as used in this Act,
14 shall have the meanings set forth in this section:

15 (a) "Act" shall mean this Arkansas Highway Financing Act of 1999.

16 (b) "Bonds" shall mean the "State of Arkansas Federal Highway Grant
17 Anticipation and Tax Revenue Bonds" or "GARVEE bonds," as authorized herein.

18 (c) "Commission" shall mean the Arkansas State Highway Commission,
19 created and existing pursuant to Amendment 42 to the Constitution of the State
20 of Arkansas.

21 (d) "Debt service" shall mean all amounts required for the payment of
22 principal, interest on, and premium, if any, due with respect to the bonds in
23 any fiscal year, along with all associated costs, including the fees and costs
24 of paying agents and trustees, remarketing agent fees, credit enhancement
25 costs, and other amounts necessary in connection with the bonds.

26 (e) "Designated revenues" shall mean:

27 (1) That portion designated by the Commission of funds received
28 or to be received from the federal government of the United States as federal
29 highway assistance funding allocated to the state designated as federal
30 highway interstate maintenance funds, and, if needed, that portion of national
31 highway system funds authorized by Commission Minute Order 98-214 adopted
32 September 22, 1998; and

33 (2) Revenues derived from the increase in taxes levied on
34 distillate special fuels pursuant to Section 2 of the "Arkansas Distillate
35 Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax Act of
36 1999" and transferred to the State Highway and Transportation Department Fund

1 pursuant to Arkansas Code 27-70-207(c) in accordance with Section 4(a) of the
2 "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel
3 Excise Tax Act of 1999".

4 (f) "Highway improvements" or "highway improvement projects" shall mean
5 restoration and improvements to all of the interstate highway systems within
6 the state, including roadways, bridges or right-of-way under the jurisdiction
7 of the Commission, and shall also include the acquisition, construction,
8 reconstruction and renovation of such interstate system and facilities
9 appurtenant or pertaining thereto.

10
11 SECTION 3. AUTHORIZATION - PURPOSES. The State Highway Commission is
12 hereby authorized, subject to the approval of the voters in a state-wide
13 election, to issue bonds to be known as State of Arkansas Federal Highway
14 Grant Anticipation and Tax Revenue Bonds, in a total principal amount not to
15 exceed five hundred seventy-five million dollars (\$575,000,000) for the
16 purpose of:

17 (1) Accelerating certain highway improvement projects already underway
18 or scheduled;

19 (2) Funding new highway improvement projects;

20 (3) Financing the restoration, reconstruction, and renovation of
21 highway improvements within the State of Arkansas; and

22 (4) Paying the costs of issuance of the bonds, including the costs of
23 bond issuance or other credit enhancement.

24
25 SECTION 4. PROJECTS TO BE FINANCED.

26 (a) The Commission shall prepare and distribute to the Governor a
27 report setting forth the specific highway improvement projects which would be
28 financed if all of the authorized bonds were to be issued and the estimated
29 cost of each project. Upon receipt of the report described in the preceding
30 sentence, the Governor shall, if he deems it to be in the public interest, by
31 proclamation call an election on the question of issuing the bonds.

32 (b) The report of projects described in Section 4(a) hereof may be
33 modified by the Commission from time to time in accordance with Amendment 42
34 to the Arkansas Constitution.

35
36 SECTION 5. ELECTION.

1 (a) No bonds shall be issued under this Act unless the issuance of
2 bonds has been approved by a majority of the qualified electors of the state
3 voting on the question at a state-wide election called by proclamation of the
4 Governor. Such election may be in conjunction with a general election or it
5 may be a special election. Notice of such election shall be published by the
6 Secretary State in a newspaper of general circulation in the state at least
7 thirty (30) days prior to such election, and notice thereof shall be mailed to
8 each county board of election commissioners and the sheriff of each county at
9 least sixty (60) days prior to such election.

10 (b) The notice of election shall state that the election is to be held
11 for the purpose of submitting to the people the following proposition, in
12 substantially the form set forth herein:

13 "Authorizing the State Highway Commission to issue State of Arkansas
14 Federal Highway Grant Anticipation and Tax Revenue Bonds (the "Bonds") in a
15 total principal amount not to exceed five hundred seventy-five million dollars
16 (\$575,000,000). If approved, such bonds will be issued in several series of
17 various principal amounts from time to time for the purpose of paying the cost
18 of constructing and renovating improvements to interstate highways and related
19 facilities in the State of Arkansas.

20 The bonds shall be general obligations of the State of Arkansas, payable
21 from certain designated revenues and also secured by the full faith and credit
22 of the State of Arkansas, including its general revenues. Pursuant to the
23 Arkansas Highway Financing Act of 1999 (the "Bond Act"), the bonds will be
24 repaid first from: (1) revenues derived from federal highway assistance
25 funding allocated to the State of Arkansas designated as federal highway
26 interstate maintenance funds, and, if needed, that portion of national highway
27 system funds authorized by Commission Minute Order 98-214 adopted September
28 22, 1998, and (2) revenue derived from the increase in the excise tax levied
29 on distillate special fuels (diesel) pursuant to Section 2 of the "Arkansas
30 Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax
31 Act of 1999" and transferred to the State Highway and Transportation
32 Department Fund pursuant to Arkansas Code 27-70-207(c) in accordance with
33 Section 4(a) of the "Arkansas Distillate Special Fuel Excise Tax Act of 1999"
34 and the "Motor Fuel Excise Tax Act of 1999." To the extent that designated
35 revenues are insufficient to make timely payment of debt service on the bonds,
36 such payment shall be made from the general revenues of the State of Arkansas.

1 The bonds shall be issued pursuant to the authority of and the terms set
2 forth in the Bond Act.

3 Pursuant to the Bond Act, the specific highway improvements to be
4 financed are limited to restoration and improvements to all of the interstate
5 highway systems within the state, including roadways, bridges or rights-of-way
6 under jurisdiction of the Arkansas State Highway Commission, which shall also
7 include the acquisition, construction, reconstruction and renovation of such
8 interstate highway systems and facilities appurtenant or pertaining thereto.

9 Pursuant to the Bond Act, "designated revenues" are defined as: (1)
10 that portion designated by the Commission of all funds received or to be
11 received from the federal government of the United States as federal highway
12 interstate maintenance funds, and, if needed, that portion of national highway
13 system funds authorized by Commission Minute Order 98-214 adopted September
14 22, 1998, and (2) revenues derived from the increase in taxes levied on
15 distillate special fuels pursuant to Section 2 of the "Arkansas Distillate
16 Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax Act of
17 1999" and transferred to the State Highway and Transportation Department Fund
18 pursuant to Arkansas Code 27-70-207(c) in accordance with Section 4(a) of the
19 "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel
20 Excise Tax Act of 1999." Designated revenues shall not include the revenues
21 derived from the increase in tax on motor fuel (gasoline) resulting from the
22 Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel
23 Excise Tax Act of 1999. The bonds are further secured by the full faith and
24 credit of the State of Arkansas, and to the extent "designated revenues" are
25 insufficient to make timely payment of debt service on the bonds, the general
26 revenues of the state shall be used to pay debt service on the bonds. Pursuant
27 to Section 2 of the "Arkansas Distillate Special Fuel Excise Tax Act of 1999"
28 and the "Motor Fuel Excise Tax Act of 1999", the excise tax on distillate
29 special fuels, in addition to the taxes levied pursuant to Arkansas Code
30 Sections 26-56-201, 26-56-502 and 26-56-601, will increase by two cents (2¢)
31 per gallon on the effective date of the Act, and the additional tax levied by
32 Section 2 of the Act shall increase to four cents (4¢) per gallon on the first
33 anniversary of such date.

34 (c) The ballot title shall be "Issuance of State of Arkansas Federal
35 Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and
36 credit of the State of Arkansas." On each ballot there shall be printed the

1 title, the proposition set forth in Section 5(b) hereof, and the following:

2 “FOR issuance of State of Arkansas Federal Highway Grant Anticipation
3 and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge
4 of the full faith and credit of the State of Arkansas to further secure such
5 bonds []”

6 “AGAINST issuance of State of Arkansas Federal Highway Grant
7 Anticipation and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and
8 the pledge of the full faith and credit of the State of Arkansas to further
9 secure such bonds []”

10 (d) The county boards of election commissioners in each of the
11 several counties of the state shall hold and conduct the election, and each
12 such board is hereby authorized and directed to take such action with respect
13 to the appointment of election officials and such other matters as is required
14 by the laws of the state. The vote shall be canvassed and the result thereof
15 declared in each county by such boards. The results shall, within ten (10)
16 days after the date of the election, be certified by such county boards to the
17 Secretary of State, who shall forthwith tabulate all returns so received and
18 certify to the Governor the total vote for and against the proposition
19 submitted pursuant to this Act.

20 (e) The result of the election shall be proclaimed by the Governor by
21 the publication of such proclamation one (1) time in a newspaper of general
22 circulation in the State of Arkansas, and the results as proclaimed shall be
23 conclusive unless a complaint is filed within thirty (30) days after the date
24 of such publication in the chancery court of Pulaski County challenging such
25 results.

26 (f) If a majority of the qualified electors voting on the proposition
27 vote in favor of the issuance of the Bonds, then the Commission shall proceed
28 with the issuance of bonds in the manner and on the terms set forth in this
29 Act. If a majority of the qualified electors voting on the proposition vote
30 against the issuance of the bonds, none of the bonds authorized by this Act
31 shall be issued. Subsequent elections may be called by the Governor if the
32 proposition fails, but each such subsequent election may be held no earlier
33 than six (6) months after the date of the preceding election.

34
35 SECTION 6. PROCEDURE FOR ISSUING BONDS. Prior to the issuance of any
36 series of bonds, the Commission shall adopt a resolution authorizing the

1 issuance of such series of bonds. Each such resolution shall contain such
2 terms, covenants, and conditions as are deemed desirable and consistent with
3 this Act, including, without limitation, those pertaining to the establishment
4 and maintenance of funds and accounts, the deposit and investment of the
5 Federal Highway Assistance payments and bond proceeds, and the rights and
6 obligations of the state, its officers and officials, the Commission, and the
7 registered owners of the bonds. The resolutions of the Commission may provide
8 for the execution and delivery by the Commission of a trust indenture or trust
9 indentures, with one or more banks or trust companies located within or
10 without the state, containing any of the terms, covenants, and conditions
11 referred to above and such other terms and conditions deemed necessary by the
12 Commission, which trust indenture or trust indentures shall be binding upon
13 the Commission and the state, and their respective officers and officials.
14

15 SECTION 7. TERMS OF BONDS. The bonds shall be subject to the following
16 terms and conditions:

17 (a) The bonds shall be issued in series, as set forth herein, in
18 amounts sufficient to finance all or part of the costs of construction and
19 maintenance of highway improvements described in Section 4 hereof, with the
20 respective series to be designated by the year in which issued and, if more
21 than one (1) series is to be issued in a particular year, by alphabetical
22 designation.

23 (b) The bonds of each series shall have such date or dates as the
24 Commission shall determine and shall mature, or be subject to mandatory
25 sinking fund redemption, over a period ending not later than twelve (12) years
26 after the date of issue of each series.

27 (c) The bonds of each series shall bear interest at the rate or rates
28 determined by the Commission at the sale of the bonds. The bonds may bear
29 interest at either a fixed or a variable rate, or may be convertible from one
30 interest rate mode to another, and such interest shall be payable at such
31 times as the Commission shall determine.

32 (d) The bonds shall be issued in the form of bonds registered as to
33 both principal and interest without coupons; may be in such denominations; and
34 may be made exchangeable for bonds of another form or denomination, bearing
35 the same rate of interest; may be made payable at such places within or
36 without the state; may be made subject to redemption prior to maturity in such

1 manner and for such redemption prices; and may contain such other terms and
2 conditions, all as the Commission shall determine.

3 (e) Each bond shall be executed with the facsimile signatures of the
4 chairman and secretary of the Commission and shall have affixed or imprinted
5 thereon the seal of the Commission. Delivery of the bonds so executed shall
6 be valid, notwithstanding any change in the persons holding such offices
7 occurring after the bonds have been executed.

8
9 SECTION 8. SALE OF BONDS.

10 (a) The bonds may be sold in such manner, either at private or public
11 sale, and upon such terms as the Commission shall determine to be reasonable
12 and expedient for effecting the purposes of this Act. The bonds may be sold
13 at a price acceptable to the Commission, which price may include a discount or
14 a premium.

15 (b) If the bonds are to be sold at public sale, the Commission shall
16 give notice of the offering of such bonds in a manner reasonably designed to
17 notify participants in the public finance industry that such offering is being
18 made. The Commission shall set the terms and conditions of bidding, including
19 the basis on which the winning bid will be selected.

20 (c) The Commission is authorized to structure the sale of bonds
21 utilizing such financing techniques as are recommended by its professional
22 advisors in order to take advantage of market conditions and obtain the most
23 favorable interest rates consistent with the purposes of this Act. In
24 furtherance of this authorization, the Commission may enter into such
25 ancillary agreements in connection with the sale of the bonds as it deems
26 necessary and advisable, including, without limitation, bond purchase
27 agreements, remarketing agreements, and letter of credit and reimbursement
28 agreements.

29
30 SECTION 9. EMPLOYMENT OF PROFESSIONALS. The Commission is authorized
31 to retain such professionals as it deems necessary to accomplish the issuance
32 and sale of the bonds, including, without limitation, legal counsel, financial
33 advisors, underwriters, trustees, paying agents and remarketing agents.

34
35 SECTION 10. SOURCES OF REPAYMENT. The bonds shall be general
36 obligations of the State of Arkansas secured and payable from the designated

1 revenues, as defined herein, and the general revenues of the state. The bonds
2 will be payable first from certain designated revenues, specifically: (1)
3 that portion designated by the Commission of funds received or to be received
4 from the federal government of the United States as federal highway assistance
5 funding allocated to the state designated as federal highway interstate
6 maintenance funds, and, if needed, that portion of national highway system
7 funds authorized by Commission Minute Order 98-214 adopted September 22, 1998,
8 and (2) revenues derived from the increase in taxes levied on distillate
9 special fuels pursuant to Section 2 of the "Arkansas Distillate Special Fuel
10 Excise Tax Act of 1999" and the "Motor Fuel Excise Tax Act of 1999" and
11 transferred to the State Highway and Transportation Department Fund pursuant
12 to Arkansas Code 27-70-207(c) in accordance with Section 4(a) of the "Arkansas
13 Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax
14 Act of 1999." To the extent that designated revenues are insufficient to make
15 timely payment of debt service on the bonds, such payment shall be made from
16 the general revenues of the State of Arkansas. In order to secure the payment
17 of debt service, any trust instrument, resolution, or other document setting
18 forth the security for the bondholders may provide for the direct payment of
19 the federal highway assistance funds that are designated revenues directly
20 into a trust fund, or to a paying agent, for the payment of debt service on
21 the bonds and it shall not be necessary for such funds to be deposited with
22 the treasury of the state.

23
24 SECTION 11. INVESTMENT OF PROCEEDS.

25 Any designated revenues, and any proceeds of bonds held pending
26 disbursement on highway improvements, shall be invested by the Commission to
27 the full extent practicable pending disbursement for the purposes intended.
28 Notwithstanding any other provision of law, such investments shall be in
29 accordance with the terms of the resolution or trust indenture authorizing or
30 securing the series of bonds to which said designated revenues or bond
31 proceeds appertain to the extent the terms of such resolution or trust
32 indenture are applicable.

33
34 SECTION 12. REFUNDING BONDS.

35 (a) The Commission may issue bonds for the purpose of refunding bonds
36 previously issued pursuant to this Act; provided, however, that the total

1 amount of bonds outstanding after the refunding is completed does not exceed
2 the total amount authorized by this Act.

3 (b) Such refunding bonds shall be special obligations of the State of
4 Arkansas, secured as set forth herein, and shall be secured and sold in
5 accordance with the provisions of this Act.

6
7 SECTION 13. TAX EXEMPTION. All bonds issued under this Act, and
8 interest thereon, shall be exempt from all taxes of the State of Arkansas,
9 including income, inheritance, and property taxes. The bonds shall be
10 eligible to secure deposits of all public funds, and shall be legal for
11 investment of municipal, county, bank, fiduciary, insurance company and trust
12 funds.

13
14 SECTION 14. POWERS OF COMMISSION. All powers granted to the Commission
15 pursuant to this Act shall be deemed in addition to such powers as already
16 exist pursuant to Amendment 42 to the Arkansas Constitution and the laws of
17 the State of Arkansas. No member of the Commission shall be liable personally
18 for any reason arising from the issuance of bonds pursuant to this Act unless
19 such person shall have acted with corrupt intent.

20
21 SECTION 15. All provisions of this act of a general and permanent
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
23 Code Revision Commission shall incorporate the same in the Code.

24
25 SECTION 16. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

30
31 SECTION 17. All laws and parts of laws in conflict with this act are
32 hereby repealed.

33
34 SECTION 18. EMERGENCY CLAUSE. It is hereby found and determined by the
35 Eighty-second General Assembly that there is an immediate need for the
36 construction, reconstruction and renovation of highways and roads comprising

1 the U.S. Interstate system within the State of Arkansas and that such a
2 program cannot be accomplished without the issuance of bonds secured by
3 federal highway assistance payments to finance the program. Therefore, an
4 emergency is declared to exist and this act being immediately necessary for
5 the preservation of the public peace, health and safety shall become effective
6 on the date of its approval by the Governor. If the bill is neither approved
7 nor vetoed by the Governor, it shall become effective on the expiration of the
8 period of time during which the Governor may veto the bill. If the bill is
9 vetoed by the Governor and the veto is overridden, it shall become effective
10 on the date the last house overrides the veto.

11 */s/ Courtway*

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