

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: H3/19/01 H3/22/01 H4/10/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

HOUSE BILL 2585

4

5 By: Representative Carson

6

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 15, CHAPTER 5
10 TO ADD A SUBCHAPTER 14 TO ESTABLISH THE ARKANSAS
11 DEVELOPMENT FINANCE AUTHORITY RAILROAD FINANCING
12 ACT; AND FOR OTHER PURPOSES.

13

14

Subtitle

15

16

17

18

19

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

21

22 SECTION 1. Arkansas Code Title 15, Chapter 5, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 14 - Arkansas Development Finance Authority Railroad
25 Financing Act

26 15-5-1401. Title.

27 The subchapter shall be known and be cited as the "Arkansas Development
28 Finance Authority Railroad Financing Act".

29

30 15-5-1402. Purpose.

31 The Federal Railroad Administration, under Section 7203 of the
32 Transportation Equity Act for the 21st Century, is authorized to make direct
33 loans to small railroads to finance railroad rehabilitation and improvement
34 projects. Under the Federal Railroad Administration regulations to implement
35 the Railroad Rehabilitation and Improvements Financing program, any small
36 railroads applying for federal loans are required to pay a credit risk

1 premium for the privilege of receiving a loan under this program. The credit
2 risk premium can be paid by the railroad or by an infrastructure partner of
3 the project. The payment of the credit risk premium must be made before the
4 loan moneys can be disbursed and are not part of the loan amount. With this
5 in mind, the Arkansas General Assembly finds that the small railroads in
6 Arkansas may not be able to raise the amount of money needed to pay the
7 credit risk premium to participate in this program; that these small
8 railroads are not then able to access badly needed capital financing for
9 railroad improvements; and that therefore a state program is needed to assist
10 these small railroads with funding of the credit risk premiums.

11
12 15-5-1403. Definitions.

13 As used in this subchapter, unless the context otherwise requires:

14 (1) "Authority" means the Arkansas Development Finance Authority;

15 (2) "Board" means the Board of Directors of the Arkansas Development
16 Finance Authority;

17 (3) "Credit risk premium" means that portion of the total subsidy cost
18 to the federal government of a direct loan or loan guarantee that is not
19 covered by federal appropriations and which must be paid by a railroad or its
20 non-federal infrastructure partner before that direct federal loan can be
21 disbursed or loan guarantee can be issued by the Federal Railroad
22 Administration under the Railroad Rehabilitation and Improvement Financing
23 program.

24 (4) "Credit risk premium loan" means a direct loan by the Arkansas
25 Development Finance Authority from the fund for the payment of the credit
26 risk premium by the railroad or an infrastructure partner made in accordance
27 with this subchapter;

28 (5) "Fund" means the fund created under this subchapter for the
29 purpose of making direct loans and grants by authority to railroads, the
30 Arkansas Railroad Credit Risk Premium Revolving Loan Fund;

31 (6) "Infrastructure partner" means any state or local government,
32 government sponsored authority or corporation, railroad, or group of two or
33 more entities, at least one of which is a railroad, participating in a joint
34 venture, who supplies or is the source of the credit risk premium which must
35 be paid to the Federal Railroad Administration in lieu of, or in combination
36 with, an appropriation in connection with federal financial assistance

1 provided to the railroad for a railroad rehabilitation and improvement
2 financing project;

3 (7) "Qualified borrower" means an applicant that has been approved for
4 a railroad rehabilitation and improvement financing loan from the Federal
5 Railroad Administration and that who has applied to the authority for a
6 credit risk premium loan under this subchapter;

7 (8) "Railroad" means a rail carrier subject to Part A of Subtitle IV
8 of Title 49, United States Code.

9 (9) "Railroad rehabilitation and improvement financing project" means
10 the project for which proceeds of a Federal Railroad Administration loan are
11 utilized which includes financial assistance solely to:

12 (A) Acquire, improve, or rehabilitate intermodal or rail freight
13 or passenger equipment or facilities, including track, components of track,
14 bridges, yards, buildings, and shops;

15 (B) Refinance outstanding debt incurred for purposes described
16 in subdivision (9)(A) of this section; or

17 (C) Develop or establish new intermodal or railroad facilities;

18 (10) "State" means the State of Arkansas.

19
20 15-5-1404. Duty of the authority.

21 (a) The Arkansas Development Finance Authority, in addition to all the
22 duties and functions defined in the Arkansas Development Finance Authority
23 Act, §§ 15-5-101 - 15-5-106, 15-5-201 - 15-5-211, 15-5-213, and 15-5-301 -
24 15-5-316, is empowered to approve or deny the applications for the loans to
25 pay credit risk premiums for qualified borrowers.

26 (b) If funds are available, the authority may make grants to railroads
27 which may not qualify for repayment of a credit risk premium loan.

28
29 15-5-1405. Loans - Conditions.

30 Loans for credit risk premiums may be made when:

31 (1) The Arkansas Development Finance Authority deems the making of a
32 loan to be in the best interest of the economic development of the State of
33 Arkansas;

34 (2) The railroad is found to be financially responsible and
35 demonstrates that sufficient income may be reasonably expected to be
36 available to pay the payments on the loan and the normal operating expenses

1 of the business; and

2 (3) The credit risk premium loan does not exceed ten (10) years in
3 length of payback term.

4
5 15-5-1406. Evaluation of railroads.

6 (a) The Arkansas Development Finance Authority shall promulgate
7 standards and regulations for the evaluation of the financial condition and
8 business history of the railroads and may require the attachment to each
9 application for a loan under this subchapter of a financial report and
10 evaluation by an independent certified public accounting firm in addition to
11 the examination and evaluation as the authority may make in determining
12 whether the railroad meets prescribed minimum standards and qualifications
13 before entering into any loan under this subchapter.

14 (b) The authority shall also be empowered to promulgate rules and
15 regulations for the handling of disbursements from and payments to the
16 Arkansas Railroad Credit Risk Premium Revolving Loan Fund and for the
17 management and implementation of programs provided in this subchapter.

18
19 15-5-1407. Applications - Supporting documents.

20 Each railroad requesting a credit risk premium loan shall submit to the
21 Arkansas Development Finance Authority an application, supporting documents,
22 and instruments as may be required by the rules and regulations promulgated
23 by the authority pursuant to this subchapter and approved by a majority vote
24 of the Board of Directors of the Arkansas Development Finance Authority.

25
26 15-5-1408. Applications - Review - Confidentiality and public
27 disclosure - Notice.

28 (a) All applications filed with the Arkansas Development Finance
29 Authority under the provisions of this subchapter shall first be reviewed by
30 the appropriate designated staff officials of the authority for preliminary
31 review and recommendation prior to being submitted for consideration by the
32 authority.

33 (b) All applications submitted to the authority and all supporting
34 documents, instruments, proposed contracts, estimated costs, or other
35 evidence submitted therewith shall be confidential and shall not be open to
36 public review except as provided in this subchapter, and all staff meetings

1 for the purpose of giving preliminary review of the applications shall be
2 confidential and shall not be open to the public.

3 (c) Upon conclusion of the preliminary review, if the request is
4 submitted to the authority with a recommendation that it be approved, the
5 application and all supporting documents, including the findings and the
6 recommendations resulting from the staff shall be an open public record
7 available for inspection during all regular business hours.

8 (d) In the event that an application from a railroad is not
9 recommended for approval by the authority hereunder, that application and all
10 supporting documents, including all findings and recommendations by the
11 staff, shall continue to be confidential and not open to public inspection.

12 (e) The railroad shall be notified in writing of any staff
13 determination that the application is not being submitted to the authority
14 with a recommendation that it be approved, which notice shall advise the
15 railroad that the application will be kept confidential unless the railroad
16 shall, within thirty (30) days from the date of receipt of the written
17 notice, file a petition with the authority requesting that the authority hold
18 a hearing in regard to the application, in which event the application and
19 all supporting documents shall become public information available for public
20 inspection.

21
22 15-5-1409. Disposition of funds.

23 (a) The Director of the Department of Finance and Administration may
24 accept any and all donations, grants, bequests, and devises, conditional or
25 otherwise, of money, property, services, or other things of value which may
26 be received from the federal government or any agency thereof, any
27 governmental agency, or any institution, person, firm, or corporation, public
28 or private, to be held, used, or applied for any or all of the purposes
29 specified in this subchapter.

30 (b) The funds received in subsection (a) shall be declared to
31 constitute cash funds restricted in their use and dedicated to be used solely
32 as authorized in § 15-5-1410.

33 (c) The cash funds as received by the Department of Finance and
34 Administration shall not be deposited in or deemed to be a part of the State
35 Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas
36 Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any

1 other constitutional or statutory provision. The department shall pay the
2 cash funds to the Arkansas Development Finance Authority for depositing those
3 amounts in the Arkansas Railroad Credit Risk Premium Revolving Loan Fund for
4 the purposes authorized by § 15-5-1410.

5 (d) The authority shall administer the funds so deposited and shall
6 use the funds for the purposes of loan assistance to railroads for credit
7 risk premiums on railroad rehabilitation and improvement financing projects
8 and for grants to railroads for payment of credit risk premiums if they do
9 not qualify for repayment of a loan under this subchapter.

10
11 15-5-1410. Arkansas Railroad Credit Risk Premium Revolving Loan Fund.

12 (a) There is established a cash fund account of the Arkansas
13 Development Finance Authority to be known as the "Arkansas Railroad Credit
14 Risk Premium Revolving Loan Fund". This cash fund account is to be maintained
15 in one (1) or more financial institutions and shall be administered in
16 accordance with this subchapter.

17 (b) The authority is authorized to accept moneys for the Arkansas
18 Railroad Credit Risk Premium Revolving Loan Fund from any source, including,
19 but not limited to, funds from the Department of Finance and Administration
20 as provided in § 15-5-1409.

21 (c) The fund shall be a continuing fund, not subject to fiscal year
22 limitations, and shall be used for loans for the payment of credit risk
23 premiums for railroad rehabilitation and improvements in this state and as
24 provided in subsection (d) of this section.

25 (d) Any interest at the end of the fiscal year which exceeds the
26 amount necessary to cover loan defaults occurring during that fiscal year
27 together with a reasonable reserve for future losses, shall be made available
28 for nonrefundable grants to railroads for credit risk premiums in cases where
29 private financing of the credit risk premium is unavailable and where a
30 railroad may not qualify for repayment of a credit risk premium loan.

31 (e) This fund shall be administered by the Arkansas Development
32 Finance Authority.

33
34 15-5-1411. Loan for credit risk premiums - Annual report.

35 (a) The Arkansas Development Finance Authority is authorized to
36 develop and implement, with the technical assistance of the Arkansas State

1 Highway and Transportation Department, necessary rules and regulations to
2 receive, review, and approve applications for loan assistance for credit risk
3 premiums on railroad rehabilitation and improvement projects in this state.

4 (b) The maximum loan amount approved by the authority shall be
5 modified as necessary to ensure adequate loan assistance is available for
6 credit risk premiums on railroad rehabilitation and improvement projects.

7 (c) For loans under this subchapter, the board will give priority
8 consideration, but not necessarily in the following order, to projects that:

9 (1) Enhance public safety;

10 (2) Enhance the environment;

11 (3) Promote economic development;

12 (4) Enable United States companies to be more competitive in
13 international markets;

14 (5) Are endorsed by the plans prepared under Section 135 of
15 Title 23, United States Code, by the state or states in which they are
16 located; or

17 (6) Preserve or enhance rail or intermodal service to small
18 communities or rural areas.

19 (d) The authority shall report each October to the Legislative Council
20 on the status of the Arkansas Railroad Credit Risk Premium Revolving Loan
21 Fund.

22
23 15-5-1412. Criteria for grant approval.

24 The Arkansas Development Finance Authority is authorized to develop and
25 implement criteria for grant approval of interest moneys to be used as
26 authorized in § 15-5-1410(d).

27
28
29 /s/ Carson
30
31
32
33
34
35
36