

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  
2 84th General Assembly  
3 Regular Session, 2003  
4

As Engrossed: H3/18/03 H4/3/03

# A Bill

HOUSE BILL 2476

5 By: Representative Adams  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS ARKANSAS CODE SECTIONS  
10 THAT GOVERN THE CREATION OF JAIL BOARDS AND THE  
11 ISSUANCE OF REVENUE BONDS; AND FOR OTHER  
12 PURPOSES.  
13

### Subtitle

15 TO AMEND VARIOUS ARKANSAS CODE SECTIONS  
16 THAT GOVERN THE CREATION OF JAIL BOARDS  
17 AND THE ISSUANCE OF REVENUE BONDS.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 *SECTION 1. Arkansas Code Title 12, Chapter 41, Subchapter 7 is amended*  
23 *to read as follows:*

24 *Subchapter 7 - ~~County and City Jails~~ Jail Boards - Revenue Bonds*  
25

26 *12-41-701. Definitions.*

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

28 *(1) "Bonds" means bonds, ~~and any series of bonds, or other evidences~~*  
29 *of indebtedness authorized by and issued by a ~~county or municipality board~~*  
30 *pursuant to the provisions of this subchapter;*

31 *(2) "Jail" means ~~the~~ a county jail, or jails, and jail facilities of a*  
32 *county, ~~or~~ a municipal jail, or jails, and jail facilities of any a*  
33 *municipality, or a public instrumentality jail, or jails, and jail facilities*  
34 *of a public instrumentality in this state. The term "jail" shall also mean a*  
35 *jail constructed and operated under a cooperative agreement between any two*  
36 *(2) or more municipalities, ~~two (2) or more counties, or one (1) or more~~*



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1 ~~municipalities public instrumentalities in any combination and one (1) or~~  
 2 ~~more counties, for the incarceration housing of their respective prisoners~~  
 3 ~~misdemeanant incarcerants, and other incarcerants awaiting trial;~~

4 (3) "Jail facilities" means all property of any nature, whether  
 5 personal or real, tangible or intangible, related in any way to a jail and  
 6 its functions;

7 ~~(3)(4)~~ "Board" means the county jail board, ~~or the~~ municipal jail  
 8 board, or public instrumentality jail board as the case may be, established  
 9 by ordinance or resolution of the quorum court of the county, or the  
 10 governing body of the municipality or public instrumentality under the  
 11 provisions of this subchapter;

12 ~~(4)(5)~~ "Construct" or "construction" means to acquire, construct,  
 13 reconstruct, remodel, install, and equip any lands, buildings, structures,  
 14 improvements, or other real, personal, or mixed property used in connection  
 15 with a jail and to make other necessary expenditures in connection therewith,  
 16 by such methods and in such manner as may be authorized by law. The term  
 17 "construct" or "construction" also includes payment or provision for payment  
 18 of expenses incidental thereto;

19 ~~(5)(6)~~ ~~"Expansion"~~ "Expand" or "expansion" means ~~any additions,~~  
 20 ~~renovations, extensions, or improvements to a county or municipal jail or~~  
 21 ~~jail facility~~ to add, renovate, extend, or improve a jail and may include any  
 22 necessary or appropriate remodeling or improvement to a present jail and  
 23 shall include appropriate equipment and furnishings as determined by the  
 24 board. The term "expand" or "expansion" also includes payment or provision  
 25 for payment of expenses incidental to expansion;

26 ~~(6)(7)~~ "Fines" or "fines and penalties" means the fines, ~~or~~ penalties,  
 27 bonds against fines, court costs, filing fees, other court fees, and other  
 28 sums payable by judicial order, statute, ordinance, or otherwise imposed by  
 29 law and collected by a county, ~~or a~~ municipality, or public instrumentality  
 30 or otherwise for convictions arising from each of the offenses listed below:

31 (A) Operating or being in actual physical control of a motor  
 32 vehicle while intoxicated; "intoxicated" meaning, for the purposes of this  
 33 subchapter, influenced or affected by the ingestion of alcohol, a controlled  
 34 substance, or a combination thereof, to such a degree that the driver's  
 35 reactions, motor skills, and judgment are substantially altered and the  
 36 driver, therefore, constitutes a clear and substantial danger of physical

1 injury or death to himself or other motorists or pedestrians;

2 (B) Operating or being in actual physical control of a motor  
3 vehicle while impaired by alcohol or drugs; the word "impaired" meaning, for  
4 the purposes of this subchapter, influenced or affected by the ingestion of  
5 alcohol, a controlled substance, or a combination thereof, to such a degree  
6 that the driver's reaction, motor skills, and judgment are reduced or  
7 lessened and the driver constitutes a threat of physical injury or death to  
8 himself or other motorists or pedestrians;

9 (C) Operating or being in actual physical control of a motor  
10 vehicle if, at that time, there was an alcohol concentration of eight-  
11 hundredths (0.08) or more in the person's breath or blood, as determined by a  
12 chemical test of the person's blood, urine, breath, or other bodily  
13 substance;

14 ~~(7)(8)~~ "Pledged revenues" means all revenues allocated by this  
15 subchapter to be pledged for the security and payment of the bonds; ~~and~~

16 ~~(8)(9)~~ "Municipality" means any city of the first class or city of the  
17 second class and any incorporated town in this state; ~~and~~

18 (10) "Public instrumentality" means any public facilities board,  
19 regardless of whether formed by county or municipal ordinance, and any other  
20 governmental or political subdivision of this state.

21  
22 12-41-702. Method supplemental.

23 The method set forth in this subchapter shall be supplemental to any  
24 other method authorized by law for construction, renovation, or expansion of  
25 ~~county or municipal~~ jails.

26  
27 12-41-703. Adoption of ordinance.

28 Any county quorum court or governing body of a municipality or public  
29 instrumentality desiring to construct, renovate, or expand a ~~county jail and~~  
30 ~~jail facilities~~ in the manner authorized in this subchapter, ~~and the~~  
31 ~~governing body of any municipality desiring to construct or expand a~~  
32 ~~municipal jail and jail facilities in the manner authorized in this~~  
33 ~~subchapter,~~ may adopt an ordinance or resolution to establish a ~~county jail~~  
34 ~~board or a municipal jail~~ board, as the case may be, and to authorize the  
35 board to issue revenue bonds to construct, renovate, or expand the ~~county~~  
36 ~~jail or jail facilities or the municipal jail or jail facilities in the~~

1 manner authorized in this subchapter.

2  
3 12-41-704. Jail boards.

4 (a)(1) Any county, municipality, or public instrumentality electing to  
5 ~~issue county jail revenue~~ form a board for the purpose of issuing bonds under  
6 the provisions of this subchapter, and ~~any municipality electing to issue~~  
7 ~~municipal jail revenue bonds under the provisions of this subchapter~~, shall,  
8 by ordinance or resolution adopted by the county quorum court or by the  
9 governing body of the municipality or public instrumentality, establish a  
10 ~~jail~~ board consisting of such members, not less than three (3) nor more than  
11 seven (7) in number, as provided in the ordinance or resolution.

12 (2) After reasonable notice and an opportunity for a hearing  
13 concerning the alleged grounds for removal, any member of the board may be  
14 removed for misfeasance, malfeasance, or willful neglect of duty by the  
15 county quorum court or governing body of the municipality or public  
16 instrumentality that created the board.

17 (b) The county judge of the county shall serve as a member of ~~the~~  
18 ~~county jail~~ a board created by the county, and the ~~mayor of the city~~  
19 principal executive officer of the municipality or public instrumentality  
20 shall serve as a member of ~~the municipal jail~~ a board created by a  
21 municipality or public instrumentality, unless the county judge or principal  
22 executive officer is removed as provided in this subchapter.

23 (c) The ~~jail~~ board is authorized and empowered to:

24 (1) Construct a ~~county or municipal jail or jail facilities~~ or  
25 provide for the renovation or expansion of an existing county or municipal  
26 jail facilities on a site or sites selected by the board;

27 (2) Enter into contracts with the government of the United  
28 States, any state agency, state or governmental body or political  
29 subdivision, public or private corporation or other legal entity, or any  
30 individual, or a combination of any of these entities and individuals, to  
31 provide for the design, financing, construction, expansion, operation and  
32 maintenance of all or any portion of a jail, or for any combination of such  
33 services and functions.

34 ~~(2)(3)~~ (3) Arrange for the housing of prisoners incarcerated during  
35 the period in which any such ~~facilities are~~ jail is undergoing construction,  
36 renovation, or expansion;

1           ~~(3)~~(4) Construct or cause to be constructed parking facilities  
2 to serve the jail and the public having business therein;

3           ~~(4)~~(5) Obtain the necessary funds for accomplishing its powers,  
4 purposes, and authority;

5           ~~(5)~~(6) Purchase, lease, or rent and receive bequests or  
6 donations of or otherwise acquire, sell, trade, or barter any real, personal,  
7 or mixed property and convert into money or any property not needed or which  
8 cannot be used in its then current form;

9           ~~(6)~~(7) Contract and be contracted with, apply for, receive,  
10 accept, and use any moneys and property from the Government of the United  
11 States, any state agency, any state or governmental body or political  
12 subdivision, any public or private corporation of any nature, or any  
13 individual;

14           (8) Enter into long or short term contracts with counties,  
15 municipalities, public instrumentalities, the State of Arkansas, agencies of  
16 the federal government, and other public or private entities under which the  
17 board shall provide nightly or other periodic housing of these entities'  
18 misdeemeanant or other incarcerants for fee compensation or other  
19 consideration;

20           (9) Offer incarcerants the option in lieu of incarceration to  
21 participate in community service programs and all other forms of voluntary  
22 labor;

23           (10) To the extent allowed under applicable law, enter into  
24 contracts with third party governmental or private entities under which the  
25 board may receive compensation for supplying to those entities with the  
26 voluntary services and labor of incarcerants;

27           (11) Enter into jail management contracts with third party  
28 governmental or private organizations upon terms and conditions that the  
29 board determines appropriate;

30           (12) Pledge to the repayment of debt any and all contract  
31 receivables and revenues of any kind that are payable to the board;

32           (13) Mortgage real property and grant a security interest in all  
33 personal, intangible, or other property, including all contract receivables  
34 and revenues of any kind that are payable to the board;

35           (14) Borrow funds that shall be available for board use with an  
36 obligation to repay;

1           ~~(7)~~(15) Invest and reinvest any of its moneys and securities as  
2 authorized by law; and

3           ~~(8)~~(16) Take such other action not inconsistent with law as may  
4 be necessary and desirable to carry out the power, purposes, and authority  
5 set forth in this subchapter and to carry out the intent of this subchapter.  
6

7           12-41-705. Bonds - Authority to issue.

8           The ~~county jail board or the municipal jail board, as the case may be,~~  
9 is authorized and empowered to issue bonds, at one (1) time or in series from  
10 time to time, and to use the proceeds thereof, together with any other funds,  
11 for financing the cost of construction, renovation, or expansion of the  
12 ~~county or municipal jail or jail facilities,~~ together with all expenses  
13 incidental to and reasonably necessary in connection therewith, the expenses  
14 of the issuance of the bonds, the creating and maintenance of reserves to  
15 secure the payment of the bonds, if the board deems it necessary or  
16 desirable, and for providing for the payment of the interest on the bonds, if  
17 necessary or desirable, until sufficient funds are available therefor out of  
18 pledged revenues.  
19

20           12-41-706. Bonds - Authorizing resolution.

21           (a) The bonds shall be authorized by resolution of the ~~county jail~~  
22 ~~board or the municipal jail board.~~

23           (b) The authorizing resolution may contain any terms, covenants, and  
24 conditions that are deemed necessary or desirable by the board, including  
25 without limitation, those pertaining to the creation and maintenance of  
26 various funds and reserves, the nature and extent of the security, the  
27 issuance of additional series of bonds and the priority of lien and pledge in  
28 that event, and the rights, duties, and obligations of the board and of the  
29 holders and registered owners of the bonds, all as the board shall determine.

30           (c) The authorizing resolution may provide for the execution of a  
31 trust indenture with a bank or trust company located within or outside the  
32 State of Arkansas containing appropriate ~~the~~ terms, covenants, and conditions  
33 ~~authorized in this subchapter.~~  
34

35           12-41-707. Bonds - Contract between parties - Enforcement.

36           (a) Together with this subchapter and the ordinance or resolution of

1 the quorum court or the governing body of the municipality or public  
 2 instrumentality acting pursuant to this subchapter, each authorizing  
 3 resolution or trust indenture shall constitute a contract by and between the  
 4 ~~county jail board or the municipal jail board~~ and the holders and registered  
 5 owners of the bonds issued pursuant to this subchapter.

6 (b) The contract and all covenants, agreements, and obligations  
 7 therein shall be properly performed in strict accordance with the terms and  
 8 provisions thereof.

9 (c) The covenants, agreements, and obligations of the bonds may be  
 10 enforced by mandamus or other appropriate proceedings at law or in equity.

11  
 12 12-41-708. Bonds - Terms and conditions.

13 (a) The bonds ~~may be coupon bonds, payable to the bearer, or may be~~  
 14 ~~registrable as to principal only, or may~~ shall be registrable as to both  
 15 principal and interest; may contain such exchange provisions; may be in such  
 16 form and denomination; may be payable on such date or dates; may be stated to  
 17 mature at such time or times; may bear interest payable at such times and at  
 18 such rate or rates; may be made payable at such places within and outside the  
 19 State of Arkansas; may be made subject to such terms of redemption in advance  
 20 of maturity at such times and at such prices; and may contain such other  
 21 terms and conditions, all as the ~~county jail board or the municipal jail~~  
 22 ~~board~~ shall determine.

23 (b) The bonds shall have all the qualities of negotiable instruments  
 24 under the laws of the State of Arkansas, subject to provisions as to  
 25 registration or ownerships as set forth above.

26 (c) It shall be plainly stated on the face of each bond that it has  
 27 been issued under the provisions of this subchapter and under the provisions  
 28 of the ~~ordinance~~ resolution of the ~~quorum court or of the governing body of~~  
 29 ~~the municipality~~ board authorizing the issuance thereof.

30  
 31 12-41-709. Bonds - Sale - Disposition of proceeds.

32 (a) The bonds may be sold in such manner and at such prices, including  
 33 sale at discount, as the ~~county jail board or the municipal jail board~~ may  
 34 accept.

35 (b) The proceeds derived from the sale of revenue bonds by ~~a county or~~  
 36 ~~a municipality~~ the board under the provisions of this subchapter shall be

1 deposited in a ~~county board jail fund or a municipal jail fund, as the case~~  
 2 ~~may be,~~ and shall be used ~~solely~~ for the purposes of constructing or  
 3 expanding jails, and for all other expenses incidental to the issuance of the  
 4 bonds of such city or county or municipality, as authorized in this  
 5 subchapter.

6  
 7 12-41-710. Bonds - Coupons - Execution - Seal.

8 (a) Bonds issued pursuant to this subchapter shall ~~be executed by the~~  
 9 ~~chairman and secretary of the county jail board or the municipal jail board~~  
 10 ~~by manual or facsimile signature with at least one (1) manual signature bear~~  
 11 the manual or facsimile signature of the presiding officer of the board and  
 12 the manual authenticating signature or the trustee or paying agent of the  
 13 bonds, if the trustee or paying agent exists.

14 ~~(b) The coupons attached to the bonds shall be executed by the~~  
 15 ~~facsimile signature of the chairman of the board.~~

16 ~~(c)~~(b) In case any of the officers whose signatures appear on the  
 17 bonds ~~or coupons~~ shall cease to be officers before delivery of the bonds ~~or~~  
 18 ~~coupons,~~ their signature shall, nevertheless, be valid and sufficient for all  
 19 purposes.

20 ~~(d)~~(c) Each bond shall be sealed with the seal of the board.

21  
 22 12-41-711. Bonds - Liability on.

23 (a) Bonds issued pursuant to this subchapter shall be obligations only  
 24 of the issuing ~~county jail board or the municipal jail board.~~ In no event  
 25 shall they constitute any indebtedness for which the faith and credit of the  
 26 county or the municipality or the public instrumentality that created the  
 27 board issuing the bonds, or any of their respective revenues, or of the State  
 28 of Arkansas or any of its revenues, as used in Arkansas Constitution,  
 29 Amendment 20, are pledged, except that the fines and penalties described  
 30 under this subchapter may be pledged.

31 (b) The bonds shall not be secured by a mortgage or lien on any land,  
 32 buildings, or property belonging to the county, municipality, or public  
 33 instrumentality that created the board, but may be secured by the real and  
 34 personal property owned by the board, and all other revenues of whatever  
 35 nature that are received by the board or otherwise generated as a result of  
 36 the board's activities or city issuing such bonds.

1 (c) No member of the board shall be personally liable on the bonds or  
 2 for any damages sustained by anyone in connection with any contracts entered  
 3 into or action taken in carrying out the powers, purposes, or authority of  
 4 this subchapter, or of the ordinance or resolution adopted by the quorum  
 5 court or governing body of the municipality or public instrumentality, unless  
 6 he shall have acted with a corrupt intent.

7  
 8 12-41-712. Bonds - Pledge of revenues - Funds.

9 (a)(1) The principal, premiums, if any, interest on, and trustees' and  
 10 paying agents' fees in connection with all bonds issued under this subchapter  
 11 shall be secured by a lien on and pledge of the fee revenues and the gross  
 12 revenues derived from revenues collected from fines or penalties for  
 13 convictions of the offenses as defined in this subchapter, all real property  
 14 and personal property owned by the board and all other collateral identified  
 15 in that trust indenture pursuant to which the bond are issued.

16 (2) The pledged revenues and such principal and interest are  
 17 specifically declared to be cash funds, restricted in their use and  
 18 dedication and to be used solely as provided in this subchapter.

19 (3) Bonds may additionally be secured and collateralized by:

20 (A) The board's pledge of contract revenue receivables  
 21 realized through the execution of contracts with third parties for  
 22 incarcerant housing;

23 (B) Income received from supplying third parties with  
 24 incarcerant services and labor; and

25 (C) All other revenues and income that the board may  
 26 realize through its operations that are otherwise expressly pledged and  
 27 identified in the bonds' trust indenture or authorizing resolution.

28 (b) There is created a fund designated ~~county~~ jail revenue bond fund,  
 29 with respect to ~~county~~ bonds issued under this subchapter ~~and a fund~~  
 30 ~~designated municipal jail revenue bond fund, with respect to municipal bonds~~  
 31 ~~issued under this subchapter~~, to be maintained at such depository ~~and as~~  
 32 shall be specified by the ~~appropriate county jail or municipal jail~~ board.

33 (c) The fund shall be a trust fund, and after the issuance of any  
 34 bonds pursuant to this subchapter, the moneys therein shall be applied ~~solely~~  
 35 for the payment of the principal of, premiums, if any, and interest on the  
 36 bonds, trustees', and paying agents', and any other fees in connection with

1 the bonds at maturity and at redemption prior to maturity, except moneys that  
2 are withdrawn therefrom pursuant to § 12-41-709(b), all as shall be specified  
3 and subject to the terms and conditions set forth in the authorizing  
4 resolution or trust indenture.

5 (d) The pledged revenues shall not be deposited into the county  
6 treasury, ~~or the city~~ municipal treasury, or public instrumentality treasury  
7 but, as and when received, shall be deposited into the appropriate jail  
8 revenue bond fund.

9 (e) The principal, premiums, if any, and interest on the bonds, and  
10 trustees', ~~and~~ paying agents', and any other fees in connection with the  
11 bonds ~~shall be payable solely~~ may be paid from the moneys in the jail revenue  
12 bond fund and the moneys required by this subchapter to be deposited in the  
13 jail revenue bond fund.

14 (f) The board is directed to insert appropriate provisions in the  
15 authorizing resolution or trust indenture for the investment and reinvestment  
16 of moneys in the jail revenue bond fund in securities selected by the board,  
17 and all income derived from such investment shall be and become part of the  
18 jail revenue bond fund.

19  
20 12-41-713. Bonds - Tax exemption.

21 Bonds and other evidences of indebtedness issued under the provisions  
22 of this subchapter and the interest thereon shall be exempt from all state,  
23 county, and municipal taxes, and this exemption shall include income,  
24 inheritance, and state taxes.

25  
26 12-41-714. Bonds - Investments by public entities.

27 Any municipality or any board, commission, or the governing authority  
28 established by ordinance of any municipality, or the governing authorities,  
29 respectively, of the firemen's relief and pension fund and the policemen's  
30 pension and relief fund of any such municipality or the governing authority  
31 of any retirement system created by the General Assembly of the State of  
32 Arkansas or any agency may, in its discretion, invest any of its funds not  
33 immediately needed for its purposes in bonds and other evidences of  
34 indebtedness issued under the provisions of this subchapter. Any bonds issued  
35 under the provisions of this subchapter shall be eligible to secure the  
36 deposit of public funds.

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12-41-715. Fees, costs, etc. - Disposition.

(a) Any county, municipality, or public instrumentality adopting an ordinance or resolution providing for the establishment of a ~~county jail board, and any municipality adopting an ordinance providing for the establishment of a municipal jail board,~~ and authorizing the board to issue ~~county jail revenue bonds or municipal jail revenue bonds, as the case may be,~~ as authorized in this subchapter, may provide that all revenues derived by the county, ~~or city~~ municipality, or public instrumentality from all fines or penalties as defined in this subchapter shall be remitted to and deposited by the county treasurer, ~~or by the city municipal~~ treasurer, or public instrumentality treasurer in one (1) or more banks doing business in the county, ~~or the city municipality, or county or municipality in which the public instrumentality is primarily located,~~ to the credit of a ~~county jail revenue bond fund with respect to county jail revenue bonds, or to a municipal jail revenue bond fund with respect to municipal jail revenue bonds,~~ to be used solely for the purposes as provided in this subchapter.

(b) Any person charged with a felony or misdemeanor for which a fine or penalty, as defined in this subchapter, is imposed, who shall post bond and forfeit it upon failure to appear on the date set for trial, the entire amount, or any identified portion of the ~~of~~ bond forfeiture shall be deposited in the ~~county jail revenue bond fund or the municipal jail revenue bond fund, as the case may be,~~ as provided in this subchapter.

(c) All revenues derived from the fines collected under the provisions of this subchapter are determined to be "fee revenues" and are declared to be cash funds. The revenues shall not be deposited in the county treasury, ~~or the municipal treasury,~~ or public instrumentality treasury, but shall be deposited in the bank or banks selected by the respective boards.

(d) The fee revenues as provided in this section shall be collected and applied as provided in this subchapter until the principal, premiums, if any, and interest on bonds issued under this subchapter, with trustees' and paying agents' fees, shall be paid or adequate provision made for their payment.

12-41-716. Use of county jail fund for supervision and transportation of inmates.

