

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 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2887

4
5 By: Representative Bolin
6 By: Senator Higginbothom

For An Act To Be Entitled

10 AN ACT TO AUTHORIZE THE STATE HIGHWAY COMMISSION
11 TO ISSUE STATE OF ARKANSAS GENERAL OBLIGATION
12 BONDS FOR THE PURPOSES OF CONSTRUCTING AND
13 RENOVATING ROADS AND HIGHWAYS; PROVIDING FOR A
14 STATEWIDE ELECTION ON THE QUESTION OF ISSUING
15 BONDS; DECLARING AN EMERGENCY; AND FOR OTHER
16 PURPOSES.

Subtitle

18 ARKANSAS STATE HIGHWAY BOND ACT OF 2005.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add a new
25 subchapter to read as follows:

26 27-64-401. Title.

27 This subchapter may be referred to and shall be cited as the "Arkansas
28 State Highway Bond Act of 2005".

29
30 27-64-402. Legislative findings and intent.

31 The General Assembly finds that:

32 (1) There is an immediate need for new highway construction and
33 improvements throughout the State of Arkansas in order to provide for the
34 health, safety, and welfare of its citizens and to promote economic
35 development within the state;

36 (2) Existing highway improvement and construction projects may



1 be completed ahead of schedule with additional funds;

2 (3) Continued improvement of the state highway system is
3 necessary and that the best way to accomplish the improvement expeditiously
4 is through the issuance of general obligations bonds to finance highway
5 improvements; and

6 (4) The repayment of the bonds shall be guaranteed from
7 dedicated revenue and shall also be guaranteed by the full faith and credit
8 of the state.

9
10 27-64-403. Definitions.

11 As used in this subchapter:

12 (1) "Bonds" means the Arkansas State Highway Bonds authorized in
13 this subchapter;

14 (2) "Commission" means the State Highway Commission;

15 (3) "Debt service" means all amounts required for the payment of
16 principal, interest, and premium, if any, due with respect to the bonds in
17 any fiscal year, along with all associated costs, including the fees and
18 costs of paying agents and trustees, remarketing agent fees, credit
19 enhancement costs, and other amounts necessary in connection with the bonds;

20 (4) "Designated revenues" means the revenues derived from the
21 tax levied under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106(a), and 26-53-
22 107(a) and (b) on the sale or purchase of new motor vehicles, trailers, or
23 semitrailers; and

24 (5) "Highway improvements" or "highway improvement projects"
25 means:

26 (A) Restoration and improvements to portions of the state
27 highway system, including roadways, bridges, or rights-of-way under the
28 jurisdiction of the commission;

29 (B) State highway projects currently in progress;

30 (C) New highway construction as determined by the
31 commission; and

32 (D) The acquisition, construction, reconstruction, and
33 renovation of the state highway system and facilities appurtenant or
34 pertaining to the state highway system.

35
36 27-64-404. Authorization – Purposes.

1 (a) Subject to the one-time approval of the voters in a statewide
 2 election, the State Highway Commission may issue bonds from time to time if
 3 the total principal amount outstanding from the issuance of the bonds does
 4 not at any time exceed seven hundred fifty million dollars (\$750,000,000).

5 (b) The purposes of the bond issuance are:

6 (1) Accelerating state highway improvement projects already
 7 underway or scheduled;

8 (2) Funding new state highway improvement projects;

9 (3) Financing the restoration, reconstruction, and renovation of
 10 state highway improvements within the State of Arkansas; and

11 (4) Paying the costs of issuance of the bonds or other credit
 12 enhancement.

13
 14 27-64-405. Election.

15 (a)(1) No bonds shall be issued under this subchapter unless the
 16 authority of the State Highway Commission to issue the bonds from time to
 17 time is approved by a majority of the qualified electors of the state voting
 18 on the question at a statewide election called by proclamation of the
 19 Governor.

20 (2) The election may be in conjunction with a general election
 21 or it may be a special election.

22 (b)(1) Notice of the election shall be:

23 (A) Published by the Secretary of State in a newspaper of
 24 general circulation in the state at least thirty (30) days prior to the
 25 election; and

26 (B) Mailed to each county board of election commissioners
 27 and the sheriff of each county at least sixty (60) days prior to the
 28 election.

29 (2) The notice of election shall state that the election is to
 30 be held for the purpose of submitting to the people the following
 31 proposition, in substantially the following form:

32 “Authorizing the State Highway Commission to issue Arkansas State
 33 Highway Bonds (the “Bonds”) if the total principal amount outstanding from
 34 the issuance of the bonds shall not, at any time, exceed seven hundred fifty
 35 million dollars (\$750,000,000), and approving the use of a portion of sales
 36 and use taxes on new vehicles for the repayment of the bonds. If approved,

1 the bonds will be issued in several series of various principal amounts from
2 time to time for the purpose of paying the cost of constructing and
3 renovating improvements to state highways and related facilities in the State
4 of Arkansas.

5 The bonds shall be general obligations of the State of Arkansas,
6 payable from certain designated revenues and also secured by the full faith
7 and credit of the State of Arkansas, including its general revenues.

8 Pursuant to the Arkansas State Highway Bond Act of 2005 (the "Bond
9 Act"), the bonds will be repaid first from the revenues derived from the tax
10 levied under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106(a), and 26-53-
11 107(a) and (b) on the sale or purchase of new motor vehicles, trailers, or
12 semitrailers. To the extent that designated revenues are insufficient to
13 make timely payment of debt service on the bonds, the payment shall be made
14 from the general revenues of the State of Arkansas. The bonds shall be
15 issued pursuant to the authority of and the terms set forth in the Bond Act.

16 Pursuant to the Bond Act, the highway improvements to be financed are
17 limited to the restoration and improvements to all of the state highway
18 systems within the state, including roadways, bridges, or rights-of-way under
19 jurisdiction of the State Highway Commission, which shall also include the
20 acquisition, construction, reconstruction, and renovation of the state
21 highway systems and facilities appurtenant or pertaining thereto.

22 Pursuant to the Bond Act, "designated revenues" are defined as the
23 revenues derived from the tax levied under §§ 26-52-301, 26-52-302(a) and
24 (b), 26-53-106(a), and 26-53-107(a) and (b) on the sale or purchase of new
25 motor vehicles, trailers, or semitrailers. The bonds are further secured by
26 the full faith and credit of the State of Arkansas, and to the extent
27 "designated revenues" are insufficient to make timely payment of debt service
28 on the bonds, the general revenues of the state shall be used to pay debt
29 service on the bonds."

30 (c) The ballot title shall be "Issuance of Arkansas State Highway
31 Bonds, pledge of full faith and credit of the State of Arkansas, and approval
32 of the use of a portion of sales and use taxes on new vehicles for bond
33 repayment". On each ballot there shall be printed the title, the proposition
34 set forth in (b)(2) of this section, and the following:

35 "FOR authorizing the State Highway Commission to issue Arkansas State
36 Highway Bonds, provided that the total principal amount outstanding from the

1 issuance of the bonds shall not, at any time, exceed seven hundred fifty
2 million dollars (\$750,000,000), the pledge of the full faith and credit of
3 the State of Arkansas to further secure the bonds, and the use of sales and
4 use tax on new vehicles for the payment of bonds []”

5 “AGAINST authorizing the State Highway Commission to issue Arkansas
6 State Highway Bonds, provided that the total principal amount outstanding
7 from the issuance of the bonds shall not, at any time, exceed seven hundred
8 fifty million dollars (\$750,000,000), the pledge of the full faith and credit
9 of the State of Arkansas to further secure the bonds, and the use of sales
10 and use tax on new vehicles for the payment of bonds []”

11 (d)(1) Each county board of election commissioners shall hold and
12 conduct the election and may take any action with respect to the appointment
13 of election officials and other matters as required by the laws of the state.

14 (2) The vote shall be canvassed and the result of the vote
15 declared in each county by the board. Within ten (10) days after the date of
16 the election, the results shall be certified by the boards to the Secretary
17 of State, who shall tabulate all returns received and certify to the Governor
18 the total vote for and against the proposition submitted pursuant to this
19 subchapter.

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

25 (f)(1) If a majority of the qualified electors voting on the
26 proposition vote in favor of the proposition, then the commission may issue
27 bonds from time to time in the manner and on the terms set forth in this
28 subchapter.

29 (2) If a majority of the qualified electors voting on the
30 proposition vote against the proposition, the commission shall have no
31 authority to issue bonds.

32 (g) Subsequent elections may be called by the Governor if the
33 proposition fails, but each subsequent election may be held no earlier than
34 six (6) months after the date of the preceding election.

35
36 27-64-406. Procedure for issuing bonds.

1 (a) Prior to the issuance of any series of bonds, the State Highway
 2 Commission shall adopt a resolution authorizing the issuance of the series of
 3 bonds.

4 (b) Each resolution shall contain the terms, covenants, and conditions
 5 that are deemed desirable and consistent with this subchapter, including,
 6 without limitation, those pertaining to the establishment and maintenance of
 7 funds and accounts, bond proceeds, and the rights and obligations of the
 8 state, its officers and officials, the commission, and the registered owners
 9 of the bonds.

10 (c) The resolutions of the commission may provide for the execution
 11 and delivery by the commission of a trust indenture or trust indentures with
 12 one (1) or more banks or trust companies located within or without the state,
 13 containing any of the terms, covenants, and conditions required under
 14 subsection (b) of this section and any other terms and conditions deemed
 15 necessary by the commission. The trust indenture or trust indentures shall
 16 be binding upon the commission and the state and their respective officers
 17 and officials.

18
 19 27-64-407. Terms of bonds.

20 The bonds shall be subject to the following terms and conditions:

21 (1) The bonds shall be issued in series in amounts sufficient to
 22 finance all or part of the costs of construction and maintenance of highway
 23 improvements. The respective series of bonds shall be designated by the year
 24 in which the bonds are issued. If more than one (1) series of bonds is to be
 25 issued in a particular year, the series shall be designated alphabetically;

26 (2) The bonds of each series shall have such date or dates as
 27 the State Highway Commission shall determine. The bonds shall mature or be
 28 subject to mandatory sinking fund redemption over a period ending not later
 29 than twelve (12) years after the date of issue of each series;

30 (3) The bonds of each series shall bear interest at the rate or
 31 rates determined by the commission at the sale of the bonds. The bonds may
 32 bear interest at either a fixed or a variable rate or may be convertible from
 33 one (1) interest rate mode to another. The interest shall be payable at the
 34 times that the commission shall determine;

35 (4) The bonds shall be issued in the form of bonds registered as
 36 to both principal and interest without coupons;

1 (5) The commission shall determine:

2 (A) The denominations of the bonds;

3 (B) Whether the bonds may be made exchangeable for bonds
4 of another form or denomination bearing the same rate of interest;

5 (C) When the bonds may be made payable and the places
6 within or without the state where the bonds may be payable;

7 (D) Whether the bonds may be made subject to redemption
8 prior to maturity and the manner of and prices for redemption; and

9 (E) Any other terms and conditions; and

10 (6) Each bond shall be executed with the facsimile signatures of
11 the chair and secretary of the commission and the seal of the commission
12 shall be affixed or imprinted on the bond. Delivery of executed bonds shall
13 be valid, notwithstanding any change in the persons holding the offices that
14 occur after the bonds have been executed.

15
16 27-64-408. Sale of bonds.

17 (a) The bonds may be sold in any manner, either at private or public
18 sale, and upon terms that the State Highway Commission determines to be
19 reasonable and expedient for effecting the purposes of this subchapter. The
20 bonds may be sold at a price acceptable to the commission, which may include
21 a discount or a premium.

22 (b) If the bonds are to be sold at public sale, the commission shall
23 give notice of the offering of the bonds in a manner reasonably designed to
24 notify participants in the public finance industry that the offering is being
25 made. The commission shall set the terms and conditions of bidding,
26 including the basis on which the winning bid will be selected.

27 (c) The commission may structure the sale of bonds utilizing financing
28 techniques that are recommended by the commission's professional advisors in
29 order to take advantage of market conditions and obtain the most favorable
30 interest rates consistent with the purposes of this subchapter.

31 (d) The commission may enter into any ancillary agreements in
32 connection with the sale of the bonds that it deems necessary and advisable,
33 including, without limitation, bond purchase agreements, remarketing
34 agreements, and letter of credit and reimbursement agreements.

35
36 27-64-409. Employment of professionals.

1 The State Highway Commission may retain any professionals that it deems
 2 necessary to accomplish the issuance and sale of the bonds, including,
 3 without limitation, legal counsel, financial advisors, underwriters,
 4 trustees, paying agents, and remarketing agents.

5
 6 27-64-410. Sources of repayment.

7 (a) The bonds shall be general obligations of the State of Arkansas
 8 secured and payable from the designated revenues and the general revenues of
 9 the state.

10 (b) The bonds shall be payable first from designated revenues derived
 11 from the tax levied under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106(a),
 12 and 26-53-107(a) and (b) on the sale or purchase of new motor vehicles,
 13 trailers, or semitrailers

14 (c) If the amount of designated revenues is insufficient to make
 15 timely payment of debt service on the bonds, the payment shall be made from
 16 the general revenues of the State of Arkansas.

17 (d) In order to secure the payment of debt service, any trust
 18 instrument, resolution, or other document setting forth the security for the
 19 bondholders may provide for the direct payment of the federal highway
 20 assistance funds that are designated revenues directly into a trust fund or
 21 to a paying agent for the payment of debt service on the bonds. It shall not
 22 be necessary for the funds to be deposited into the State Treasury.

23
 24 27-64-411. Investment of proceeds.

25 (a) Any designated revenues and any proceeds of bonds held pending
 26 disbursement on highway improvements shall be invested by the State Highway
 27 Commission to the full extent practicable pending disbursement for the
 28 purposes intended.

29 (b) Notwithstanding any other provision of law, the investments shall
 30 be in accordance with the terms of the resolution or trust indenture
 31 authorizing or securing the series of bonds to which the designated revenues
 32 or bond proceeds appertain to the extent the terms of the resolution or trust
 33 indenture are applicable.

34
 35 27-64-412. Refunding bonds.

36 (a) The State Highway Commission may issue bonds for the purpose of

1 refunding bonds previously issued pursuant to this subchapter if the total
2 amount of bonds outstanding after the refunding is completed does not exceed
3 the total amount authorized by this subchapter.

4 (b) The refunding bonds shall be special obligations of the State of
5 Arkansas and shall be secured and sold in accordance with the provisions of
6 this subchapter.

7

8 27-64-413. Tax exemption.

9 (a) All bonds issued under this subchapter and interest on the bonds
10 shall be exempt from all taxes of the State of Arkansas, including income,
11 inheritance, and property taxes.

12 (b) The bonds shall be eligible to secure deposits of all public funds
13 and shall be legal for investment of municipal, county, bank, fiduciary,
14 insurance company, and trust funds.

15

16 27-64-414. Powers of the State Highway Commission.

17 (a) All powers granted to the State Highway Commission under this
18 subchapter are in addition to the powers of the commission under Arkansas
19 Constitution, Amendment 42 and the laws of the State of Arkansas.

20 (b) No member of the commission shall be liable personally for any
21 reason arising from the issuance of bonds pursuant to this subchapter unless
22 the member acts with corrupt intent.

23

24 SECTION 2. (a) On the last day of each month, the Chief Fiscal
25 Officer of the State shall certify to the Treasurer of State the amount of
26 gross receipts and compensating use tax that was:

27 (1) Deposited to the Revenue Holding Fund Account of the State
28 Apportionment Fund pursuant to § 19-6-484(1); and

29 (2) Derived from the levy of §§ 26-52-301, 26-52-302(a) and
30 (b), 26-53-106(a), and 26-53-107(a) and (b) on the sale or purchase of new
31 motor vehicles, trailers, and semitrailers.

32 (b) The amount of tax certified pursuant to subsection (a) of this
33 section shall be credited to the State Highway and Transportation Department
34 Fund for use in repayment of Arkansas State Highway Bonds.

35 (c)(1) If the State Highway Commission is authorized to issue Arkansas
36 State Highway Bonds after the election held under § 27-64-405, the effective

1 date of this section shall be the first day of the third calendar month
 2 following the issuance of the Governor's proclamation under § 27-64-405(e).

3
 4 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 5 General Assembly of the State of Arkansas that there is an immediate need for
 6 the construction, reconstruction, and renovation of highways and roads
 7 composing the state road system within the State of Arkansas; that a
 8 construction program cannot be accomplished without the issuance of bonds
 9 secured by federal highway assistance payments to finance the program; and
 10 that this act is immediately necessary in order to begin the process of
 11 facilitating the issuance of bonds. Therefore, an emergency is declared to
 12 exist and this act being immediately necessary for the preservation of the
 13 public peace, health, and safety shall become effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,
 16 the expiration of the period of time during which the Governor may veto the
 17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is
 19 overridden, the date the last house overrides the veto.