

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
4

As Engrossed: H3/9/05
A Bill

HOUSE BILL 2887

5 By: Representative Bolin
6 By: Senator Higginbothom
7
8

9 **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.

17
18 **Subtitle**

19 ARKANSAS STATE HIGHWAY BOND ACT OF 2005.
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 distributed to the State Highway and Transportation
24 Department Fund pursuant to § 27-17-506; and

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

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

30 (B) State highway projects currently in progress;

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

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

36

1 27-64-404. Authorization – Purposes.

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

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

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

9 (2) Funding new state highway improvement projects;

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

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

14
15 27-64-405. Election.

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

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

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

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

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

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

33 “Authorizing the State Highway Commission to issue Arkansas State
34 Highway Bonds (the “Bonds”) if the total principal amount outstanding from
35 the issuance of the bonds shall not, at any time, exceed seven hundred fifty
36 million dollars (\$750,000,000), approving the use of a portion of state sales

1 and use taxes on new vehicles for the repayment of the bonds, and approving
2 the use of a portion of the state sales and use taxes on new vehicles by
3 cities and counties. If approved, the bonds will be issued in several series
4 of various principal amounts from time to time for the purpose of paying the
5 cost of constructing and renovating improvements to state highways and
6 related facilities in the State of Arkansas.

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

10 Pursuant to the Arkansas State Highway Bond Act of 2005 (the "Bond
11 Act"), the bonds will be repaid first from the revenues derived from the tax
12 levied under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106(a), and 26-53-
13 107(a) and (b) on the sale or purchase of new motor vehicles, trailers, or
14 semitrailers and distributed to the State Highway and Transportation
15 Department Fund pursuant to § 26-17-506. To the extent that designated
16 revenues are insufficient to make timely payment of debt service on the
17 bonds, the payment shall be made from the general revenues of the State of
18 Arkansas. The bonds shall be issued pursuant to the authority of and the
19 terms set forth in the Bond Act.

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

26 Pursuant to the Bond Act, "designated revenues" are defined as the
27 revenues derived from the tax levied under §§ 26-52-301, 26-52-302(a) and
28 (b), 26-53-106(a), and 26-53-107(a) and (b) on the sale or purchase of new
29 motor vehicles, trailers, or semitrailers and distributed to the State
30 Highway and Transportation Department Fund pursuant to § 27-17-506. The
31 bonds are further secured by the full faith and credit of the State of
32 Arkansas, and to the extent "designated revenues" are insufficient to make
33 timely payment of debt service on the bonds, the general revenues of the
34 state shall be used to pay debt service on the bonds."

35 (c) The ballot title shall be "Issuance of Arkansas State Highway
36 Bonds, pledge of full faith and credit of the State of Arkansas, approval of

1 the use of a portion of sales and use taxes on new vehicles for bond
2 repayment, and approval of the use of a portion of the state sales and use
3 taxes on new vehicles by cities and counties. On each ballot there shall be
4 printed the title, the proposition set forth in (b)(2) of this section, and
5 the following:

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

14 “AGAINST authorizing the State Highway Commission to issue Arkansas
15 State Highway Bonds, provided that the total principal amount outstanding
16 from the issuance of the bonds shall not, at any time, exceed seven hundred
17 fifty million dollars (\$750,000,000), the pledge of the full faith and credit
18 of the State of Arkansas to further secure the bonds, the use of a portion of
19 the state sales and use taxes on new vehicles for the payment of bonds, and
20 the use of a portion of the state sales and use taxes on new vehicles by
21 cities and counties.....[]”

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

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

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

36 (f)(1) If a majority of the qualified electors voting on the

1 proposition vote in favor of the proposition, then the commission may issue
2 bonds from time to time in the manner and on the terms set forth in this
3 subchapter.

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

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

10
11 27-64-406. Procedure for issuing bonds.

12 (a) Prior to the issuance of any series of bonds, the State Highway
13 Commission shall adopt a resolution authorizing the issuance of the series of
14 bonds.

15 (b) Each resolution shall contain the terms, covenants, and conditions
16 that are deemed desirable and consistent with this subchapter, including,
17 without limitation, those pertaining to the establishment and maintenance of
18 funds and accounts, bond proceeds, and the rights and obligations of the
19 state, its officers and officials, the commission, and the registered owners
20 of the bonds.

21 (c) The resolutions of the commission may provide for the execution
22 and delivery by the commission of a trust indenture or trust indentures with
23 one (1) or more banks or trust companies located within or without the state,
24 containing any of the terms, covenants, and conditions required under
25 subsection (b) of this section and any other terms and conditions deemed
26 necessary by the commission. The trust indenture or trust indentures shall
27 be binding upon the commission and the state and their respective officers
28 and officials.

29
30 27-64-407. Terms of bonds.

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

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

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

5 (3) The bonds of each series shall bear interest at the rate or
6 rates determined by the commission at the sale of the bonds. The bonds may
7 bear interest at either a fixed or a variable rate or may be convertible from
8 one (1) interest rate mode to another. The interest shall be payable at the
9 times that the commission shall determine;

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

12 (5) The commission shall determine:

13 (A) The denominations of the bonds;

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

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

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

20 (E) Any other terms and conditions; and

21 (6) Each bond shall be executed with the facsimile signatures of
22 the chair and secretary of the commission and the seal of the commission
23 shall be affixed or imprinted on the bond. Delivery of executed bonds shall
24 be valid, notwithstanding any change in the persons holding the offices that
25 occur after the bonds have been executed.

26
27 27-64-408. Sale of bonds.

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

33 (b) If the bonds are to be sold at public sale, the commission shall
34 give notice of the offering of the bonds in a manner reasonably designed to
35 notify participants in the public finance industry that the offering is being
36 made. The commission shall set the terms and conditions of bidding,

1 including the basis on which the winning bid will be selected.

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

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

10
11 27-64-409. Employment of professionals.

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

16
17 27-64-410. Sources of repayment.

18 (a) The bonds shall be general obligations of the State of Arkansas
19 secured and payable from the designated revenues and the general revenues of
20 the state.

21 (b) The bonds shall be payable first from designated revenues derived
22 from the tax levied under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106(a),
23 and 26-53-107(a) and (b) on the sale or purchase of new motor vehicles,
24 trailers, or semitrailers and distributed to the State Highway and
25 Transportation Department Fund pursuant to § 27-17-506.

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

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

35
36 27-64-411. Investment of proceeds.

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

5 (b) Notwithstanding any other provision of law, the investments shall
6 be in accordance with the terms of the resolution or trust indenture
7 authorizing or securing the series of bonds to which the designated revenues
8 or bond proceeds appertain to the extent the terms of the resolution or trust
9 indenture are applicable.

10
11 27-64-412. Refunding bonds.

12 (a) The State Highway Commission may issue bonds for the purpose of
13 refunding bonds previously issued pursuant to this subchapter if the total
14 amount of bonds outstanding after the refunding is completed does not exceed
15 the total amount authorized by this subchapter.

16 (b) The refunding bonds shall be *general obligations* of the State of
17 Arkansas and shall be secured and sold in accordance with the provisions of
18 this subchapter.

19
20 27-64-413. Tax exemption.

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

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

27
28 27-64-414. Powers of the State Highway Commission.

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

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

35
36 SECTION 2. *Arkansas Code Title 26, Chapter 17, Subchapter 5, is*

1 amended to add an additional section to read as follows:

2 26-17-506. Distribution of sales and use tax – New vehicles. Officer
3 of the State shall certify to the Treasurer of State the amount of gross
4 receipts and compensating use tax that was:

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

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

10 (b) The amount of tax certified pursuant to subsection (a) of this
11 section shall be distributed as follows:

12 (1) Fifteen percent (15%) of the amount shall be credited to the
13 County Aid Fund;

14 (2) Fifteen percent (15%) of the amount shall be credited to the
15 Municipal Aid Fund; and

16 (3) Seventy percent (70%) of the amount shall be credited to the
17 State Highway and Transportation Department Fund for use in repayment of
18 Arkansas State Highway Bonds.

19 (c)(1) If the State Highway Commission is authorized to issue Arkansas
20 State Highway Bonds after the election held under § 27-64-405, the effective
21 date of this section shall be the first day of the third calendar month
22 following the issuance of the Governor's proclamation under § 27-64-405(e).
23

24 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that there is an immediate need for
26 the construction, reconstruction, and renovation of highways and roads
27 composing the state road system within the State of Arkansas; that a
28 construction program cannot be accomplished without the issuance of bonds
29 secured by federal highway assistance payments to finance the program; and
30 that this act is immediately necessary in order to begin the process of
31 facilitating the issuance of bonds. Therefore, an emergency is declared to
32 exist and this act being immediately necessary for the preservation of the
33 public peace, health, and safety shall become effective on:

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

35 (2) If the bill is neither approved nor vetoed by the Governor,
36 the expiration of the period of time during which the Governor may veto the

1 bill; or

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

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5 */s/ Bolin*

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