

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 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 2590

4
5 By: Representative Wills
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS HIGHWAY FINANCING
10 ACT OF 2007; TO ENSURE THE ECONOMIC DEVELOPMENT
11 OF THE STATE BY PROVIDING FOR BOND ISSUANCE FOR
12 THE ESSENTIAL INFRASTRUCTURE OF HIGHWAYS AND
13 ROADS; TO AUTHORIZE THAT THE REPAYMENT OF THE
14 BONDS BE GUARANTEED BY THE FULL FAITH AND CREDIT
15 OF THE STATE; AND FOR OTHER PURPOSES.
16

Subtitle

17 THE ARKANSAS HIGHWAY FINANCING ACT OF
18 2007: TO ENSURE THE ECONOMIC DEVELOPMENT
19 OF THE STATE BY PROVIDING FOR BOND
20 ISSUANCE FOR THE ESSENTIAL
21 INFRASTRUCTURE OF HIGHWAYS AND ROADS.
22
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add an
28 additional subchapter to read as follows:

29 27-64-401. Title.

30 This subchapter shall be known and cited as the "Arkansas Highway
31 Financing Act of 2007".
32

33 27-64-402. Legislative findings and intent.

34 The General Assembly finds that:

35 (1) There is an immediate need for highway improvements
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;

3 (2) Through the revenues generated under the Arkansas Highway
 4 Financing Act of 1999, § 27-64-201 et seq., the State Highway Commission has
 5 been successful in completing the rehabilitation of much of the state's
 6 interstate highway system and that the rehabilitation has been carried out in
 7 an efficient, cost-effective manner;

8 (3) Continued improvement of the interstate highway system is
 9 necessary and that the best way to accomplish the improvement expeditiously
 10 is through the issuance of additional federal highway grant anticipation and
 11 tax revenue bonds to finance highway improvements;

12 (4) The bonds should be payable from revenues currently
 13 designated by the Arkansas Highway Financing Act of 1999, § 27-64-201 et
 14 seq., including federal highway assistance funding and available proceeds
 15 from the distillate special fuels tax levied under § 26-56-201(e); and

16 (5) The repayment of the bonds shall also be guaranteed by the
 17 full faith and credit of the state.

18
 19 27-64-403. Definitions.

20 As used in this section:

21 (1) "Bonds" means the Arkansas Federal Highway Grant
 22 Anticipation and Tax Revenue Bonds, also known as "GARVEE bonds", as
 23 authorized in this subchapter;

24 (2) "Commission" means the State Highway Commission, created and
 25 existing pursuant to Arkansas Constitution, Amendment 42;

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

31 (4) "Designated revenues" means:

32 (A) The portion designated by the commission of funds
 33 received or to be received from the federal government as federal highway
 34 assistance funding allocated to the state designated as federal highway
 35 interstate maintenance funds; and

36 (B) Revenues derived from the distillate special fuels tax

1 levied under § 26-56-201(e) that are available for expenditure after any
 2 distributions required by the Arkansas Highway Financing Act of 1999, § 27-
 3 64-201 et seq.; and

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

10
 11 27-64-404. Authorization – Purposes.

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

17 (b) The purpose of the bond issuance shall be:

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

20 (2) Funding new highway improvement projects;

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

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

25
 26 27-64-405. Projects to be financed – Governor proclamation.

27 (a) The State Highway Commission shall prepare and distribute to the
 28 Governor a report setting forth the specific highway improvement projects
 29 which would be financed if all of the authorized bonds were to be issued and
 30 the estimated cost of each project.

31 (b) Upon receipt of the report described in subsection (a) of this
 32 section, the Governor shall, if the Governor deems it to be in the public
 33 interest, by proclamation call an election on the question of issuing the
 34 bonds.

35 (c) The report of projects described in subsection(a) of this section
 36 may be modified by the commission from time to time in accordance with

1 Arkansas Constitution, Amendment 42.

2
3 27-64-406. Election.

4 (a)(1) No State of Arkansas Federal Highway Grant Anticipation and Tax
5 Revenue Bonds shall be issued under this subchapter unless the issuance of
6 bonds has been approved by a majority of the qualified electors of the state
7 voting on the question at a statewide election called by proclamation of the
8 Governor as provided under § 27-64-405.

9 (2)(A) An election under this section may be in conjunction with
10 a general election, or it may be a special election.

11 (B)(i) A special election held under this section shall
12 occur on the second Tuesday of any month, except as otherwise provided in
13 this subsection (a).

14 (C) A special election that is held in months in which a
15 presidential preferential primary election, preferential primary election,
16 general primary election, or general election is scheduled to occur shall be
17 held on the date of the presidential preferential primary election,
18 preferential primary election, general primary election, or general election.

19 (D)(i) If a special election is held on the date of the
20 presidential preferential primary election, preferential primary election, or
21 general primary election, the issue or issues to be voted upon at the special
22 election shall be included on the ballot of each political party.

23 (ii) However, separate ballots containing only the
24 issue or issues to be voted upon at the special election shall be prepared
25 and made available to voters requesting a separate ballot.

26 (iii) No voter shall be required to vote in a
27 political party's presidential preferential primary election, preferential
28 primary election, or general primary election in order to be able to vote in
29 the special election.

30 (E) Special elections scheduled to occur in a month in
31 which the second Tuesday is a legal holiday shall be held on the third
32 Tuesday of the month.

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

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

1 (B) Mailed to each county board of election commissioners
 2 and the sheriff of each county at least sixty (60) days prior to the
 3 election.

4 (2) The notice of election shall state that the election is to
 5 be held for the purpose of submitting to the people the following proposition
 6 in substantially the following form:

7
 8 “Authorizing the State Highway Commission to issue State of Arkansas
 9 Federal Highway Grant Anticipation and Tax Revenue Bonds (the "Bonds") in a
 10 total principal amount not to exceed five hundred seventy-five million
 11 dollars (\$575,000,000). If approved, such bonds will be issued in several
 12 series of various principal amounts from time to time for the purpose of
 13 paying the cost of constructing and renovating improvements to interstate
 14 highways and related facilities in the State of Arkansas.”

15
 16 “The bonds shall be general obligations of the State of Arkansas, payable
 17 from certain designated revenues and also secured by the full faith and
 18 credit of the State of Arkansas, including its general revenues. Pursuant to
 19 the Arkansas Highway Financing Act of 2007, the "Bond Act", the bonds will be
 20 repaid: (1) First, from revenues derived from federal highway assistance
 21 funding allocated to the State of Arkansas designated as federal highway
 22 interstate maintenance funds; and (2) Second, from revenues derived from the
 23 excise tax levied on distillate special fuels (diesel) pursuant to Arkansas
 24 Code § 26-56-201(e) that are available for expenditure after any
 25 distributions required by the Arkansas Highway Financing Act of 2007. To the
 26 extent that designated revenues are insufficient to make timely payment of
 27 debt service on the bonds, the payment shall be made from the general
 28 revenues of the State of Arkansas. The bonds shall be issued pursuant to the
 29 authority of and the terms set forth in the Bond Act.”

30
 31 “Pursuant to the Bond Act, the specific highway improvements to be
 32 financed are limited to restoration and improvements to all of the interstate
 33 highway systems within the state, including roadways, bridges, or rights-of-
 34 way under the jurisdiction of the State Highway Commission, which shall also
 35 include the acquisition, construction, reconstruction, and renovation of such
 36 interstate highway systems and facilities appurtenant or pertaining thereto.”

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“Pursuant to the Bond Act, "designated revenues" are defined as: (1) the portion designated by the commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds; and (2) revenues derived from the distillate special fuels tax levied under Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent "designated revenues" are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds.”

(c) The ballot title shall be "Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas". On each ballot there shall be printed the title, the proposition set forth in subdivision (b)(2) of this section, and the following:

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

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

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

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

1 subchapter.

2 (e)(1) The result of the election shall be proclaimed by the Governor
3 by the publication of a proclamation one (1) time in a newspaper of general
4 circulation in the State of Arkansas.

5 (2) The results as proclaimed shall be conclusive unless a
6 complaint challenging the proclaimed results is filed in Pulaski County
7 Circuit Court within thirty (30) days after the date of the publication.

8 (f)(1) If a majority of the qualified electors voting on the
9 proposition vote in favor of the proposition, the commission shall proceed
10 with the issuance of the bonds in the manner and on the terms set forth in
11 this subchapter.

12 (2) If a majority of the qualified electors voting on the
13 proposition vote against the issuance of the bonds, the commission shall have
14 no authority to issue bonds.

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

18

19 27-64-407. Procedure for issuing State of Arkansas Federal Highway
20 Grant Anticipation and Tax Revenue Bonds.

21 (a) Prior to the issuance of any series of State of Arkansas Federal
22 Highway Grant Anticipation and Tax Revenue Bonds, the State Highway
23 Commission shall adopt a resolution authorizing the issuance of the series of
24 bonds.

25 (b) Each resolution adopted under this section shall contain the
26 terms, covenants, and conditions as are deemed desirable and consistent with
27 this subchapter, including, without limitation, those pertaining to:

28 (1) The establishment and maintenance of funds and accounts;

29 (2) The deposit and investment of the federal highway assistance
30 payments and bond proceeds; and

31 (3) The rights and obligations of the state, its officers and
32 officials, the commission, and the registered owners of the bonds.

33 (c)(1) The resolutions of the commission may provide for the execution
34 and delivery by the commission of a trust indenture or trust indentures, with
35 one (1) or more banks or trust companies located within or without the state,
36 containing any of the terms, covenants, and conditions required under

1 subsection (b) of this section and any other terms and conditions deemed
 2 necessary by the commission.

3 (2) The trust indenture or trust indentures shall be binding
 4 upon the commission and the state, and their respective officers and
 5 officials.

6
 7 27-64-408. Terms of bonds.

8 The State of Arkansas Federal Highway Grant Anticipation and Tax
 9 Revenue Bonds shall be subject to the following terms and conditions:

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

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

19 (3) The bonds of each series shall bear interest at the rate or
 20 rates determined by the commission at the sale of the bonds. The bonds may
 21 bear interest at either a fixed or a variable rate or may be convertible from
 22 one (1) interest rate mode to another. The interest shall be payable at the
 23 times as the commission shall determine;

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

26 (5) The commission shall determine:

27 (A) The denominations of the bonds;

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

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

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

34 (E) Any other terms and conditions; and

35 (6)(A) Each bond shall be executed with the facsimile signatures
 36 of the chair and the secretary of the commission and shall have affixed or

1 imprinted thereon the seal of the commission.

2 (B) Delivery of the bonds so executed shall be valid
 3 notwithstanding any change in the persons holding such offices occurring
 4 after the bonds have been executed.

5
 6 27-64-409. Sale of bonds.

7 (a) The State of Arkansas Federal Highway Grant Anticipation and Tax
 8 Revenue Bonds may be sold in any manner, either at private or public sale,
 9 and upon terms as the State Highway Commission shall determine to be
 10 reasonable and expedient for effecting the purposes of this subchapter.

11 (b)(1) If the bonds are to be sold at public sale, the commission
 12 shall give notice of the offering of the bonds in a manner reasonably
 13 designed to notify participants in the public finance industry that such
 14 offering is being made.

15 (2) The commission shall set the terms and conditions of
 16 bidding, including the basis on which the winning bid will be selected.

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

21 (d) The commission may enter into any ancillary agreements in
 22 connection with the sale of the bonds as it deems necessary and advisable,
 23 including without limitation, bond purchase agreements, remarketing
 24 agreements, and letter of credit and reimbursement agreements.

25
 26 27-64-410. Employment of professionals.

27 The State Highway Commission may employ and retain any professionals
 28 that it deems necessary to accomplish the issuance and sale of the State of
 29 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, including
 30 without limitation, legal counsel, financial advisors, underwriters,
 31 trustees, paying agents, and remarketing agents.

32
 33 27-64-411. Sources of repayment.

34 (a) The State of Arkansas Federal Highway Grant Anticipation and Tax
 35 Revenue Bonds shall be general obligations of the State of Arkansas secured
 36 and payable from the designated revenues and the general revenues of the

1 state.

2 (b) The bonds shall be payable first from the following designated
 3 revenues:

4 (1) The portion designated by the State Highway Commission of
 5 funds received or to be received from the federal government as federal
 6 highway assistance funding allocated to the state and designated as federal
 7 highway interstate maintenance funds; and

8 (2) Revenues derived from the distillate special fuels tax
 9 levied under § 26-56-201(e) that are available for expenditure after any
 10 distributions required by the Arkansas Highway Financing Act of 1999, § 27-
 11 64-201 et seq.

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

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

21
 22 27-64-412. Investment of proceeds.

23 (a) Any designated revenues and any proceeds of the State of Arkansas
 24 Federal Highway Grant Anticipation and Tax Revenue Bonds held pending
 25 disbursement on highway improvements shall be invested by the State Highway
 26 Commission to the full extent practicable pending disbursement for the
 27 purposes intended.

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

33
 34 27-64-413. Refunding bonds.

35 (a) The State Highway Commission may issue the State of Arkansas
 36 Federal Highway Grant Anticipation and Tax Revenue Bonds for the purpose of

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

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

7
8 27-64-414. Powers of commission.

9 (a) All powers granted to the State Highway Commission under this
10 subchapter shall be deemed in addition to the powers of the commission under
11 Arkansas Constitution, Amendment 42, and the laws of the State of Arkansas.

12 (b) No member of the commission shall be liable personally for any
13 reason arising from the issuance of bonds pursuant to this subchapter unless
14 such person shall have acted with corrupt intent.

15
16 27-64-415. Tax exemption.

17 (a) All State of Arkansas Federal Highway Grant Anticipation and Tax
18 Revenue Bonds issued under this subchapter and interest on the bonds shall be
19 exempt from all taxes of the State of Arkansas, including income,
20 inheritance, and property taxes.

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