State of Arkansas
As Engrossed: S3/27/07
86th General Assembly
Regular Session, 2007

A Bill

HOUSE BILL 2813

By: Representatives Thyer, *Cook*
By: Senator Broadway

For An Act To Be Entitled

AN ACT AUTHORIZING THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE PUBLIC SCHOOL ACADEMIC FACILITIES IN TOTAL PRINCIPAL AMOUNT NOT TO EXCEED SEVEN HUNDRED FIFTY MILLION DOLLARS ($750,000,000), IN SERIES FROM TIME TO TIME IN PRINCIPAL AMOUNTS NOT TO EXCEED, WITHOUT PRIOR APPROVAL OF THE GENERAL ASSEMBLY, ONE HUNDRED FIFTY MILLION DOLLARS ($150,000,000) IN ANY FISCAL BIENNIUM; AUTHORIZING THE GOVERNOR TO SUBMIT THE QUESTION OF ISSUANCE OF BONDS AT ANY GENERAL ELECTION OR A SPECIAL ELECTION CALLED FOR THAT PURPOSE ON OR BEFORE JUNE 30, 2011; PRESCRIBING OTHER MATTERS RELATING THERETO; AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION TO ISSUE GENERAL OBLIGATION BONDS FOR PUBLIC SCHOOL ACADEMIC FACILITIES.

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

SECTION 1. Legislative intent.

(a) The General Assembly finds:

(1) Holdings in Lake View School District No. 25 v. Huckabee, 351 Ark. 31 (2002), require the State of Arkansas to provide adequate public school academic facilities for students in the state; and

(2) It is the duty of the General Assembly to guarantee that adequate funds exist to meet public school academic facilities needs.

(b) The purpose of this act is to provide a mechanism for public school academic facilities in the event that moneys on hand are not sufficient to meet facilities needs.

SECTION 2. Arkansas Code Title 6, Chapter 20, is amended to add an additional subchapter as follows:

6-20-2601. Title.

This subchapter shall be known and may be cited as the "Arkansas Public School Academic Facilities Financing Act of 2007".

6-20-2602. Definitions.

As used in this subchapter:

(1) "Bonds" means any bonds, notes, interim certificates, or other evidences of indebtedness;

(2) “Commission” means the Commission for Arkansas Public School Academic Facilities and Transportation or its successor;

(3) "Debt service" means principal, interest, redemption premiums, if any, and trustee’s fees, paying agent’s fees, dissemination agent’s fees, and like servicing fees relative to a bond;

(4) "Develop" means to plan, design, construct, acquire by purchase, own, rehabilitate, lease as lessor or lessee, enter into lease-purchase agreements with respect to, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal, or mixed;

(5) "Federal Deposit Insurance Corporation" means the Federal Deposit Insurance Corporation or its successor that insures commercial banks;

(6) "General revenues of the state" means the revenues described and enumerated in § 19-6-201 of the Revenue Classification Law, § 19-6-101 et seq., or in any successor law;

(7) "Nationally recognized rating agency" means Moody’s

Investors Service, Inc., Standard & Poor's, Fitch Ratings, or any other nationally recognized rating agency approved by the State Investing Office; and

(8) "State Investing Office" means the Treasurer of State for the investment of any funds established on the books of the State Treasury, and the commission for the investment of any funds held outside the State Treasury.

6-20-2603. Authority to issue bonds.

(a)(1)(A) The commission is hereby authorized to issue bonds of the State of Arkansas to be known as State of Arkansas Public School Academic Facilities General Obligation bonds, in total principal amount not to exceed seven hundred fifty million dollars ($750,000,000), for the purposes of this *subchapter.*

(B) The limitation on the total principal amount of bonds under subdivision (a)(1)(A) of this section is a limitation on the total principal amount of indebtedness to be repaid by the State of Arkansas.

(2) The bonds may be issued in one (1) or more series as required under this subchapter.

(b) Unless the General Assembly authorizes a greater principal amount to be issued during a fiscal biennium, the total principal amount of bonds to be issued during any fiscal biennium shall not exceed one hundred fifty million dollars ($150,000,000).

(c)(1) Before any bonds may be issued during a fiscal biennium, the commission shall submit to the Governor a written plan:

(A) Setting forth criteria to be used by the commission in choosing the public school academic facilities projects to be financed with the proceeds derived from the sale of the bonds; and

(B) Requesting authorization for the projected maximum principal amount of bonds required to be issued in the fiscal biennium.

(2) Upon receipt of the written plan, the Governor shall:

(A) Confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the General Revenues of the State under the Revenue Stabilization Law of Arkansas, § 19-5-101 et seq., for payment of debt service requirements in connection with the bonds during either year of the fiscal biennium in which the bonds are to be issued would require moneys from the General Revenues of the State that would work undue hardship upon any agency or program supported from the General Revenues of the State under the provisions of the Revenue Stabilization Law of Arkansas, § 19-5-101 et seq.; and

(B) Upon compliance with subdivision (c)(2)(A) of this section, obtain the review of:

(i) The Joint Budget Committee if the General Assembly is in session; or

(ii) The Legislative Council if the General Assembly is not in session.

(d)(1) If the Governor deems it to be in the public interest, he or she by proclamation shall authorize the commission to proceed with the issuance of the bonds in one (1) or more series up to the maximum principal amount for the fiscal biennium approved by the Governor.

(2)(A) If the Governor refuses to give his or her approval for the issuance of the bonds by declining to issue a proclamation approving the issuance, he or she shall promptly notify the commission in writing and the bonds shall not be issued.

(B) The commission may resubmit a request to the Governor for the approval of the issuance of the bonds.

(C) The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the bonds.

6-20-2604. Terms and characteristics of bonds.

(a) The bonds shall be issued in series in amounts sufficient to finance all or any part of public school academic facility project costs with the respective series to be designated in alphabetical order, by the year in which issued, or both.

(b)(1) Each series of bonds shall have the date as the commission determines and shall mature or be subject to mandatory sinking fund redemption as determined by the commission, over a period ending not later than thirty (30) years after the date of the bonds of each series.

(2) Pending the issuance of bonds under this subchapter, the commission may issue temporary notes maturing not more than five (5) years

from the date of issuance to be exchanged for or paid from the proceeds of bonds when the bonds are issued.

(c)(1) Each series of bonds shall bear interest whether or not subject to federal income taxation at the rate or rates accepted by the commission.

(2) Interest shall be payable at such times as the commission shall determine.

(d) The commission shall determine:

(1) The form of the bonds;

(2) The denomination of the bonds;

(3) Whether the bonds may be exchanged for bonds of another form or denomination bearing the same rate of interest and date of maturity;

(4) Whether the bonds may be payable within or without the state;

(5) Whether the bonds may be subject to redemption prior to maturity, including:

(A) The manner of redemption; and

(B) The redemption prices; and

(6) Any other terms and conditions of the bonds.

(e) The bonds shall have all the qualities of negotiable instruments or securities under the laws of the state, subject to the provision for registration of ownership.

6-20-2605. Purpose of bonds.

Bonds issued under this subchapter shall be issued to finance on a temporary or permanent basis or to develop one (1) or more public school academic facility projects, and the proceeds of the bonds shall be applied to the payment of public school academic facility project costs, the costs and expenses of issuance of the bonds, the repayment of indebtedness incurred to pay public school academic facility project costs, or for refunding of bonds as provided in § 6-20-2613.

6-20-2606. Resolutions and trust indentures.

(a) The bonds shall be authorized by resolution of the commission.

(b) Each resolution shall contain the terms, covenants, and conditions deemed desirable for the bonds, including without limitation conditions pertaining to:

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

(2) The deposit and investment of revenues and of bond proceeds; and

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

(c) The resolution of the commission may provide for the execution and delivery by the commission of one (1) or more trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions stated in subsection (b) of this section.

(d) A trust indenture shall be binding upon the state and its agencies, officers, and officials to the extent set forth in this subchapter.

6-20-2607. Form of bond – Signatures.

(a) Each bond shall:

(1) Be signed with the manual or facsimile signatures of the Governor, the members of the commission, and the Treasurer of State; and

(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.

(b) Interest coupons attached to the bonds, if any, shall be signed with the facsimile signature of the Treasurer of State.

(c) Delivery of the bonds and coupons so executed shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

6-20-2608. Sale of bonds.

(a) The bonds may be sold:

(1) Either at public or private sale in a manner and upon such terms as the commission determines to be reasonable and expedient for the purposes for which the commission was created; and

(2) At the price the commission determines acceptable, including sale at a discount.

(b) The commission may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.

(c) The fees of any trustee or paying agent as well as the costs of publication of notices and of printing of the bonds, official statements, and other documents relating to the sale of the bonds, the fees of any rating agency, and other reasonable costs of issuing and selling the bonds incurred by the commission may be paid from the proceeds of the bonds.

6-20-2609. Proceeds of bonds.

(a) The proceeds from the sale of the bonds shall be deposited by the recipient thereof, as received, into trust funds either established in the State Treasury, or into accounts established outside the State Treasury in the name of the commission, to accomplish the purposes of this subchapter, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance the development of public school academic facilities projects.

(b)(1) There is established as a trust fund in the State Treasury an account designated as the School Academic Facilities Financing Act of 2007 Bond Fund that is being created to provide for payment of all or a part of the debt service in connection with bonds issued under this subchapter.

(2)(A) The Treasurer of State shall establish separate accounts and subaccounts within the fund to correspond to the applicable series of bonds.

(B) In addition, there may be created in the State Treasury such other funds, accounts, or subaccounts as the commission may determine to be necessary to accomplish the purposes of this subchapter.

(c)(1) All procedures and methods for the application of proceeds of any series of bonds to the financing of public school academic facilities project costs shall be set forth in writing.

(2) The writings shall be maintained as a part of the records of the commission.

(d) The proceeds from the sale of the bonds and any moneys in the bond fund may be invested and reinvested by the State Investing Office in any of the following:

(1) Direct obligations of the United States of America, including obligations issued or held in book-entry form on the books of the Commission of the Treasury or obligations that are unconditionally guaranteed as to principal and interest by the United States of America;

(2) Bonds, debentures, notes, or other evidences of indebtedness

issued or guaranteed by any agencies of the United States government that are backed by the full faith and credit of the United States of America;

(3) Senior debt obligations issued or guaranteed by agencies of the United States government that are non-full faith and credit agencies;

(4) Money market funds investing exclusively in the investments described in subdivision (e)(1), (2), or (3) of this section;

(5) Certificates of deposit providing for deposits secured at all times by collateral described in subdivisions (e)(1), (2), or (3) of this section if:

(A) The certificates of deposit are issued by commercial banks whose deposits are insured by the Federal Deposit Insurance Corporation and whose collateral is held by a third party; and

(B) The State Investing Office or its assigns have a perfected first security interest in the collateral;

(6) Certificates of deposit, savings accounts, deposit accounts or money market deposits, all of which are fully insured by the Federal Deposit Insurance Corporation;

(7) Bonds or notes issued by the state or any municipality, county, or school district, community college district, or regional solid waste management district in the state or any agency or instrumentality of the state;

(8) Investment agreements with financial institutions or insurance companies which are rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(9) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the State Investing Office and the transfer of cash from the State Investing Office to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the State Investing Office in exchange for the securities at a specified date if the repurchase agreements satisfy the following criteria:

(A) Repurchase agreements must be between the State Investing Office and a dealer bank or securities firm described as follows:

(i) Dealers with at least one hundred million dollars ($100,000,000) in capital; or

(ii) Banks whose deposits are insured by the Federal

Deposit Insurance Corporation; and

(B) The written repurchase agreement contract must include the following:

(i) Securities that are acceptable for transfer are those listed in subdivision (e)(1),(2), or (3) of this section;

(ii) The term of the repurchase agreement may be up to thirty (30) days;

(iii) The collateral must be delivered to the State Investing Office, trustee if the trustee is not supplying the collateral, or to a third party acting as agent for the trustee if the trustee is supplying the collateral, before or at the time of the payment and perfection by possession of certificated securities; and

(iv)(a) The securities must be valued weekly, market-to-market at current market price plus accrued interest.

(b) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the State Investing Office to the dealer bank or security firm under the repurchase agreement plus accrued interest.

(c) If the value of securities held as collateral declines below one hundred and three percent (103%) of the value of the cash transferred by the State Investing Office, then additional cash, acceptable securities, or a combination of cash and securities must be transferred and held by the State Investing Office; and

(10) Any other investment authorized by state law.

6-20-2610. Full faith and credit of state pledged to repay bonds.

The bonds shall be the direct general obligations of the state for the payment of debt service on which the full faith and credit of the state are irrevocably pledged so long as any such bonds are outstanding. The bonds shall be payable from the general revenues of the state, and the amount of general revenues of the state as is necessary is and shall remain pledged to the payment of debt service on the bonds.

6-20-2611. Payment of debt service on the bonds.

(a)(1) On or before the commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment of all or a part of the debt service on the bonds issued under this subchapter during the fiscal year to determine what amount of general revenues of the state will be required.

(2) The Chief Fiscal Officer of the State shall certify the estimated amount to the Treasurer of State.

(3) The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the Bond Fund of the amount of general revenues of the state required to pay the maturing debt service on bonds issued under this subchapter.

(b)(1) The obligation to make monthly transfers of general revenues of the state from the State Apportionment Fund to the Bond Fund shall constitute a first charge against the general revenues of the state prior to all other uses to which the general revenues of the state are devoted, either under present law or under any laws that may be enacted in the future.

(2) However, to the extent other general obligation bonds of the state have been issued or may subsequently be issued, all general obligation bonds shall rank on a parity of security with respect to payment from general revenues of the state.

(c) Moneys credited to the Bond Fund shall be used only to pay debt service on the bonds, either at maturity or upon redemption prior to maturity, and for such purposes the Treasurer of State is designated Disbursing Officer to administer such funds in accordance with this subchapter.

(d) Moneys in the Bond Fund over and above the amount necessary to insure the prompt payment of debt service on the bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity under the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the bonds.

6-20-2612. Bonds exempt from state, county, and municipal taxes.

Bonds and the interest on the bonds issued under this subchapter are exempt from state, county, and municipal taxes, including income taxes, inheritance taxes, and property taxes. The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of bank funds, fiduciary funds, insurance company funds, trust funds, and public funds.

6-20-2613. Refunding bonds.

(a)(1) Bonds may be issued under this subchapter to refund any outstanding bonds issued under this subchapter.

(2) Bonds issued under this section:

(A) Do not require the commission to submit a written plan to the Governor under § 15-20-1203(c); and

(B) Are not subject to the requirements for the approval and proclamation of the Governor under § 15-20-1203(d).

(b)(1) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be applied to the payment of the obligations refunded or may be deposited in irrevocable trust for the retirement of the outstanding obligations either at maturity or on an authorized redemption date.

(c)(1) Refunding bonds shall in all respects be authorized, issued, and secured as provided for the bonds being refunded and shall have all the attributes of the refunded bonds.

(2) To the extent that the refunding bonds are not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not be subject to the limit of seven hundred fifty million dollars ($750,000,000) set forth in § 6-20-2603(a) or the limit of one hundred fifty million dollars ($150,000,000) set forth in § 6-20-2603(b).

(d) The resolution or trust indenture under which the refunding bonds are issued shall provide that any refunding bonds shall have the same priority of payment as the obligations refunded.

6-20-2614. Additional powers of the commission.

In addition to powers conferred under other laws, the commission may take appropriate action to carry out the purposes of this subchapter.

6-20-2615. No impairment of bond obligations.

(a) This subchapter constitutes a contract between the state and the registered owners of all bonds issued under this subchapter.

(b) The contract shall never be impaired, and any violation of its terms whether under purported legislative authority or otherwise shall be enjoined by the courts at the suit of any bondholder or any taxpayer.

(c) In like suit against the commission, the Treasurer of State, or other appropriate agency, officer, or official of the state, the courts shall prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues by injunction or mandamus.

(d) Without limiting any other appropriate remedy at law or in equity, a bondholder may by an appropriate action including without limitation injunction or mandamus compel the performance of all covenants and obligations of the state, its officers and officials, under this subchapter.

6-20-2616. No obligations until bonds issued.

This subchapter shall not create any right of any character unless the first series of bonds authorized by this subchapter has been sold and delivered.

6-20-2617. Election.

(a)(1)(A) Bonds shall not be issued under this subchapter except with the consent of a majority of the qualified electors of the state voting on the question in substantially the form described in this section at any general election as determined by the Governor, unless the Governor, by proclamation, calls a special election concerning the issuance of bonds under this subchapter.

(B) If the Governor does not place the issue on the ballot at any general election or call a special election concerning the issuance of bonds under this subchapter on or before June 30, 2011, the provisions of this subchapter shall be void and no bonds shall be issued.

(2) If the question is presented at a general election, notice thereof shall be published by the Secretary of State by one (1) insertion in a newspaper of general circulation in the state at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

(3) If a special election is called by the Governor, the proclamation of the special election shall be made at least sixty (60) days prior to the date fixed by the proclamation for the election, and notice of

the special election shall be given by publication of the proclamation for one (1) insertion in one (1) newspaper of general circulation published in each county in the state not less than thirty (30) days prior to the date of the special election.

(4) If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county.

(b) In the case of the notice or proclamation for the election, it shall not be necessary to publish this subchapter in its entirety, but the notice or proclamation shall state that it is issued to submit to the people substantially the following question:

"Shall the commission be authorized to issue General Obligation bonds under the authority of the Arkansas Public School Academic Facilities Financing Act of 2007, for the financing of public school academic facilities to serve the citizens of the State of Arkansas, in total principal amount not to exceed seven hundred fifty million dollars ($750,000,000) in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, one hundred fifty million dollars ($150,000,000) in any fiscal biennium, which bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?"

(c) Whether the question is presented at a general election or at a special election, the title of this subchapter shall be the ballot title, and there shall be printed on the ballot the proposition as stated above and the following:

"FOR Issuance of State of Arkansas Public School Academic Facilities General Obligation bonds _____

AGAINST Issuance of State of Arkansas Public School Academic Facilities General Obligation bonds _____"

(d)(1) The county boards of election commissioners of the several counties of the state shall hold and conduct the election, and each board may take action with respect to the appointment of election officials and other matters as the law requires.

(2) The vote shall be canvassed and the result declared in each county by the county boards of election commissioners.

(3) Within ten (10) days after the date of the election the

results shall be certified by the county boards of election commissioners to the Secretary of State who shall tabulate all returns received by him or her and certify to the Governor the total vote for and against the proposition submitted under this section.

(e) The result of the election shall be proclaimed by the Governor by publication one (1) time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of the publication.

6-20-2618. Effect of election.

(a) If a majority of the qualified electors voting on the question vote for the issuance of the bonds, the commission shall proceed with the sale and the issuance of the bonds as provided in this subchapter.

(b) If a majority of the qualified electors voting on the question vote against the issuance of the bonds, the bonds authorized by this subchapter shall not be sold or issued, and this subchapter shall be of no further effect.

6-20-2619. No waiver of previous authority to issue bonds.

This subchapter shall not constitute a waiver of the authority to issue bonds under any other legislation authorizing the issuance of bonds for similar purposes.

6-20-2620. Severability.

If, for any reason, any section or provision of this subchapter shall be held to be unconstitutional or invalid for any reason, such holding shall not effect the remainder of this subchapter, but this subchapter, insofar as it is not in conflict with the Constitution of the State or the Constitution of the United States, shall be permitted to stand, and the various provisions of this subchapter are hereby declared to be severable for that purpose.

6-20-2621. Cases involving bonds.

A case involving the validity of this subchapter or involving the bonds issued under this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases shall be taken within thirty (30) days after rendition of the judgment or decree.

6-20-2622. Construction of subchapter.

(a) This subchapter shall be liberally construed to accomplish its purposes. This subchapter shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

(b) This subchapter shall be interpreted to supplement existing laws conferring rights and powers upon the commission, and the rights and powers set forth in this subchapter shall be regarded as alternate methods for the accomplishment of the purposes of this subchapter.

6-20-2623. Issuance of bonds.

No bonds shall be issued under this subchapter before July 1, 2009.

/s/ Thyer