

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

SENATE BILL 840

4
5 By: Senators Glover, Critcher, Bookout, Capps, Hendren, B. Johnson, J. Taylor, Trusty, Wilkins,
6 Broadway

For An Act To Be Entitled

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

Subtitle

18 "ARKANSAS INTERSTATE HIGHWAY FINANCING
19 ACT OF 2007."
20

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

27 27-64-401. Title.

28 This subchapter may be referred to and cited as the "Arkansas
29 Interstate Highway Financing Act of 2007."

30
31 27-64-402. Findings.

32 (a) The General Assembly of the State of Arkansas has determined that
33 there is an immediate need for highway improvements throughout the State of
34 Arkansas in order to provide for the health, safety and welfare of its
35 citizens and to promote economic development within the state. The General
36 Assembly has determined that through the revenues generated pursuant to the



1 Arkansas Highway Financing Act of 1999 the State Highway Commission has been
 2 successful in completing the rehabilitation of much of the State's interstate
 3 highway system and that such rehabilitation has been carried out in an
 4 efficient, cost effective manner. The General Assembly has determined that
 5 continued improvement of the interstate highway system is necessary and that
 6 the best way to accomplish such improvement expeditiously is through the
 7 issuance of additional federal highway grant anticipation and tax revenue
 8 bonds to finance such highway improvements.

9 (b) The General Assembly has further determined that the bonds should
 10 be payable from revenues currently designated by the Arkansas Highway
 11 Financing Act of 1999, including federal highway assistance funding and the
 12 proceeds from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and
 13 the Motor Fuel Excise Tax Act of 1999, and that the repayment of such bonds
 14 should also be guaranteed by the full faith and credit of the state.

15
 16 27-64-403. Definitions.

17 As used in this subchapter:

18 (1) "Act" shall mean this Arkansas Interstate Highway Financing
 19 Act of 2007.

20 (2) "Bonds" shall mean the "State of Arkansas Federal Highway
 21 Grant Anticipation and Tax Revenue Bonds" or "GARVEE bonds," as authorized
 22 herein.

23 (3) "Commission" shall mean the State Highway Commission,
 24 created and existing pursuant to Amendment 42 to the Constitution of the
 25 State of Arkansas.

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

31 (5) "Designated revenues" shall mean:

32 (1) That 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 (2) Revenues derived from the increase in taxes levied on

1 distillate special fuels pursuant to the Arkansas Distillate Special Fuel
 2 Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999.

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

9
 10 27-64-404. Authorization – Purposes.

11 The State Highway Commission is hereby authorized, subject to the
 12 approval of the voters in a state-wide election, to issue bonds from time to
 13 time provided that the total principal amount outstanding from the issuance
 14 of the bonds, together with the total principal amount outstanding from the
 15 issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall
 16 not, at any time, exceed five hundred seventy-five million dollars
 17 (\$575,000,000). The bonds will be issued in one or more series of various
 18 principal amounts, with the last series being issued no later than December
 19 31, 2013. The bonds shall be issued for following purposes:

20 (1) Accelerating interstate highway improvement projects already
 21 underway or scheduled;

22 (2) Funding new interstate highway improvement projects;

23 (3) Financing the restoration, reconstruction, and renovation of
 24 interstate highway improvements within the State of Arkansas; and

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

27
 28 27-64-405. Election.

29 (a) No bonds shall be issued under this Act unless the authority of
 30 the State Highway Commission to issue such bonds is approved by a majority of
 31 the qualified electors of the state voting on the question at a state-wide
 32 election called by proclamation of the Governor. Such election may be in
 33 conjunction with a general election or it may be a special election. Notice
 34 of such election shall be published by the Secretary of State in a newspaper
 35 of general circulation in the state at least thirty (30) days prior to such
 36 election, and notice thereof shall be mailed to each county board of election

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

3 (b) The notice of election shall state that the election is to be held
4 for the purpose of submitting to the people the following proposition, in
5 substantially the form set forth herein:

6 “Authorizing the State Highway Commission to issue State of Arkansas
7 Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) from
8 time to time provided that the total principal amount outstanding from the
9 issuance of such bonds, together with the total principal amount outstanding
10 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
11 1999, shall not, at any time, exceed five hundred seventy-five million
12 dollars (\$575,000,000). If approved, the bonds will be issued in one or more
13 series of various principal amounts, with the last series being issued no
14 later than December 31, 2013. The bonds shall be issued for the purpose of
15 paying the cost of constructing and renovating improvements to interstate
16 highways and related facilities in the State of Arkansas.

17 “The bonds shall be general obligations of the State of Arkansas,
18 payable from certain designated revenues and also secured by the full faith
19 and credit of the State of Arkansas, including its general revenues.
20 Pursuant to the Arkansas Highway Financing Act of 2007 (the “Bond Act”), the
21 bonds will be repaid first from: (1) revenues derived from federal highway
22 assistance funding allocated to the State of Arkansas designated as federal
23 highway interstate maintenance funds, and (2) revenue derived from the
24 increase in the excise tax levied on distillate special fuels (diesel)
25 pursuant to Section 2 of the “Arkansas Distillate Special Fuel Excise Tax Act
26 of 1999” and the “Motor Fuel Excise Tax Act of 1999” and transferred to the
27 State Highway and Transportation Department Fund pursuant to Arkansas Code
28 27-70-207(c) in accordance with Section 4(a) of the “Arkansas Distillate
29 Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of
30 1999.” To the extent that designated revenues are insufficient to make
31 timely payment of debt service on the bonds, such payment shall be made from
32 the general revenues of the State of Arkansas. The bonds shall be issued
33 pursuant to the authority of and the terms set forth in the Bond Act.

34 “Pursuant to the Bond Act, the highway improvements to be financed are
35 limited to the restoration and improvements to all of the interstate highway
36 system within the State, including roadways, bridges or rights-of-way under

1 jurisdiction of the State Highway Commission, which shall also include the
2 acquisition, construction, reconstruction and renovation of such interstate
3 highway system and facilities appurtenant or pertaining thereto.

4 “Pursuant to the Bond Act, “designated revenues” are defined as: (1)
5 that portion designated by the commission of all funds received or to be
6 received from the federal government as federal highway interstate
7 maintenance funds, and (2) revenues derived from the increase in taxes levied
8 on distillate special fuels pursuant to Section 2 of the “Arkansas Distillate
9 Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of
10 1999” and transferred to the State Highway and Transportation Department Fund
11 pursuant to Arkansas Code 27-70-207(c) in accordance with Section 4(a) of the
12 “Arkansas Distillate Special Fuel Excise Tax Act of 1999” and the “Motor Fuel
13 Excise Tax Act of 1999.” Designated revenues shall not include the revenues
14 derived from the increase in tax on motor fuel (gasoline) resulting from the
15 Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel
16 Excise Tax Act of 1999. The bonds are further secured by the full faith and
17 credit of the State of Arkansas, and to the extent “designated revenues” are
18 insufficient to make timely payment of debt service on the bonds, the general
19 revenues of the state shall be used to pay debt service on the bonds.”

20 (c) The ballot title shall be “Issuance of State of Arkansas Federal
21 Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and
22 credit of the State of Arkansas.” On each ballot there shall be printed the
23 title, the proposition set forth in § 27-64-406 and the following:

24 “FOR authorizing the State Highway Commission to issue State of
25 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time
26 to time provided that the total principal amount outstanding from the
27 issuance of such bonds, together with the total principal amount outstanding
28 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
29 1999, shall not, at any time, exceed five hundred seventy-five million
30 dollars (\$575,000,000); such bonds to be issued in one or more series of
31 various principal amounts, with the last series being issued no later than
32 December 31, 2013 and to be secured by the full faith and credit of the State
33 of Arkansas.[]”

34 “AGAINST authorizing the State Highway Commission to issue State of
35 Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time
36 to time provided that the total principal amount outstanding from the

1 issuance of such bonds, together with the total principal amount outstanding
2 from the issuance of bonds pursuant to Arkansas Highway Financing Act of
3 1999, shall not, at any time, exceed five hundred seventy-five million
4 dollars (\$575,000,000); such bonds to be issued in one or more series of
5 various principal amounts, with the last series being issued no later than
6 December 31, 2013 and to be secured by the full faith and credit of the State
7 of Arkansas. . . . []”

8 (d) The county boards of election commissioners in each of the several
9 counties of the state shall hold and conduct the election, and each such
10 board is hereby authorized and directed to take such action with respect to
11 the appointment of election officials and such other matters as is required
12 by the laws of the state. The vote shall be canvassed and the result thereof
13 declared in each county by such boards. The results shall, within ten (10)
14 days after the date of the election, be certified by such county boards to
15 the Secretary of State, who shall forthwith tabulate all returns so received
16 and certify to the Governor the total vote for and against the proposition
17 submitted pursuant to this Act.

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

24 (f) If a majority of the qualified electors voting on the proposition
25 vote in favor of the proposition, then the Commission shall be authorized to
26 issue bonds in the manner and on the terms set forth in this Act. If a
27 majority of the qualified electors voting on the proposition vote against the
28 proposition, the Commission shall have no such authority. Subsequent
29 elections may be called by the Governor if the proposition fails, but each
30 such subsequent election may be held no earlier than six (6) months after the
31 date of the preceding election.

32

33 27-64-406. Procedure for issuing bonds.

34 Prior to the issuance of any series of bonds, the Commission shall
35 adopt a resolution authorizing the issuance of such series of bonds. Each
36 such resolution shall contain such terms, covenants, and conditions as are

1 deemed desirable and consistent with this Act, including, without limitation,
2 those pertaining to the establishment and maintenance of funds and accounts,
3 the deposit and investment of the Federal Highway Assistance payments and
4 bond proceeds, and the rights and obligations of the state, its officers and
5 officials, the Commission, and the registered owners of the bonds. The
6 resolutions of the Commission may provide for the execution and delivery by
7 the Commission of a trust indenture or trust indentures, with one or more
8 banks or trust companies located within or without the state, containing any
9 of the terms, covenants, and conditions referred to above and such other
10 terms and conditions deemed necessary by the Commission, which trust
11 indenture or trust indentures shall be binding upon the Commission and the
12 state, and their respective officers and officials.

13
14 27-64-407. Terms of bonds.

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

16 (1) The bonds shall be issued in series, as set forth herein, in
17 amounts sufficient to finance all or part of the costs of construction and
18 maintenance of highway improvements described in § 27-64-404 with the
19 respective series to be designated by the year in which issued and, if more
20 than one (1) series is to be issued in a particular year, by alphabetical
21 designation.

22 (2) The bonds of each series shall have such date or dates as
23 the Commission shall determine and shall mature, or be subject to mandatory
24 sinking fund redemption, over a period ending not later than twelve (12)
25 years after the date of issue of each series.

26 (3) The bonds of each series shall bear interest at the rate or
27 rates determined by the Commission at the sale of the bonds. The bonds may
28 bear interest at either a fixed or a variable rate, or may be convertible
29 from one interest rate mode to another, and such interest shall be payable at
30 such times as the Commission shall determine.

31 (4) The bonds shall be issued in the form of bonds registered as
32 to both principal and interest without coupons; may be in such denominations;
33 and may be made exchangeable for bonds of another form or denomination,
34 bearing the same rate of interest; may be made payable at such places within
35 or without the state; may be made subject to redemption prior to maturity in
36 such manner and for such redemption prices; and may contain such other terms

1 and conditions, all as the Commission shall determine.

2 (5) Each bond shall be executed with the facsimile signatures of
3 the chairman and secretary of the Commission and shall have affixed or
4 imprinted thereon the seal of the Commission. Delivery of the bonds so
5 executed shall be valid, notwithstanding any change in the persons holding
6 such offices occurring after the bonds have been executed.

7
8 27-64-408. Sale of Bonds.

9 (a) The bonds may be sold in such manner, either at private or public
10 sale, and upon such terms as the Commission shall determine to be reasonable
11 and expedient for effecting the purposes of this Act. The bonds may be sold
12 at a price acceptable to the Commission, which price may include a discount
13 or a premium.

14 (b) If the bonds are to be sold at public sale, the Commission shall
15 give notice of the offering of such bonds in a manner reasonably designed to
16 notify participants in the public finance industry that such offering is
17 being made. The Commission shall set the terms and conditions of bidding,
18 including the basis on which the winning bid will be selected.

19 (c) The Commission is authorized to structure the sale of bonds
20 utilizing such financing techniques as are recommended by its professional
21 advisors in order to take advantage of market conditions and obtain the most
22 favorable interest rates consistent with the purposes of this Act. In
23 furtherance of this authorization, the Commission may enter into such
24 ancillary agreements in connection with the sale of the bonds as it deems
25 necessary and advisable, including, without limitation, bond purchase
26 agreements, remarketing agreements, and letter of credit and reimbursement
27 agreements.

28
29 27-64-409. Employment of professionals.

30 The Commission is authorized to retain such professionals as it deems
31 necessary to accomplish the issuance and sale of the bonds, including,
32 without limitation, legal counsel, financial advisors, underwriters,
33 trustees, paying agents and remarketing agents.

34
35 27-64-410. Sources of repayment.

36 The bonds shall be general obligations of the State of Arkansas secured

1 and payable from the designated revenues, as defined herein, and the general
2 revenues of the state. The bonds will be payable first from certain
3 designated revenues, specifically: (1) that portion designated by the
4 Commission of funds received or to be received from the federal government as
5 federal highway assistance funding allocated to the state designated as
6 federal highway interstate maintenance funds, and (2) revenues derived from
7 the increase in taxes levied on distillate special fuels pursuant to Section
8 2 of the "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the
9 "Motor Fuel Excise Tax Act of 1999" and transferred to the State Highway and
10 Transportation Department Fund pursuant to Arkansas Code 27-70-207(c) in
11 accordance with Section 4(a) of the "Arkansas Distillate Special Fuel Excise
12 Tax Act of 1999" and the "Motor Fuel Excise Tax Act of 1999." To the extent
13 that designated revenues are insufficient to make timely payment of debt
14 service on the bonds, such payment shall be made from the general revenues of
15 the State of Arkansas. In order to secure the payment of debt service, any
16 trust instrument, resolution, or other document setting forth the security
17 for the 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 and it shall
20 not be necessary for such funds to be deposited with the treasury of the
21 state.

22
23 27-64-411. Investment of proceeds.

24 Any designated revenues, and any proceeds of bonds held pending
25 disbursement on highway improvements, shall be invested by the Commission to
26 the full extent practicable pending disbursement for the purposes intended.
27 Notwithstanding any other provision of law, such investments shall be in
28 accordance with the terms of the resolution or trust indenture authorizing or
29 securing the series of bonds to which said designated revenues or bond
30 proceeds appertain to the extent the terms of such resolution or trust
31 indenture are applicable.

32
33 27-64-412. Refunding bonds.

34 (a) The Commission may issue bonds for the purpose of refunding bonds
35 previously issued pursuant to this Act; provided, however, that such bonds
36 are not issued after December 31, 2013 and that the total amount of bonds

1 outstanding after the refunding is completed does not exceed the total amount
 2 authorized by this Act.

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

6
 7 27-64-413. Tax Exemption.

8 All bonds issued under this Act, and interest thereon, shall be exempt
 9 from all taxes of the State of Arkansas, including income, inheritance, and
 10 property taxes. The bonds shall be eligible to secure deposits of all public
 11 funds, and shall be legal for investment of municipal, county, bank,
 12 fiduciary, insurance company and trust funds.

13
 14 27-64-414. Powers of Commission.

15 All powers granted to the State Highway Commission pursuant to this Act
 16 shall be deemed in addition to such powers as already exist pursuant to
 17 Amendment 42 to the Arkansas Constitution and the laws of the State of
 18 Arkansas. No member of the Commission shall be liable personally for any
 19 reason arising from the issuance of bonds pursuant to this Act unless such
 20 person shall have acted with corrupt intent.

21
 22 SECTION 2. Arkansas Code § 26-56-201(f), pertaining to the
 23 distribution of additional distillate fuel excise tax, is amended to read as
 24 follows:

25 (f) The additional taxes collected pursuant to this section shall be
 26 considered special revenues and shall be distributed as set forth in the
 27 Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any
 28 requirements for the repayment of bonds issued under the Arkansas Highway
 29 Financing Act of 1999, § 27-64-201 et seq., ~~and the Arkansas Interstate~~
 30 ~~Highway Financing Act of 2005, § 27-64-301 et seq.,~~ and the Arkansas
 31 Interstate Highway Financing Act of 2007.

32
 33 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 34 General Assembly of the State of Arkansas that there is an immediate need
 35 for the construction, reconstruction and renovation of highways and roads
 36 comprising the U.S. Interstate system within the State of Arkansas and that

1 such a program cannot be accomplished without the issuance of bonds secured
2 by federal highway assistance payments to finance the program. Therefore, an
3 emergency is declared to exist and this act being necessary for the
4 preservation of the public peace, health, and safety shall become effective
5 on:

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

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

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

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