

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
4

As Engrossed: S3/8/07

A Bill

SENATE BILL 840

5 By: Senators Glover, Critcher, Bookout, Capps, Hendren, B. Johnson, J. Taylor, Trusty, Wilkins,
6 Broadway, Altes, Argue, Baker, Bisbee, Brown, Bryles, Crumbly, Faris, Hill, Horn, G. Jeffress, J.
7 Jeffress, Laverty, Luker, Madison, Malone, Miller, B. Pritchard, Salmon, T. Smith, Steele, R. Thompson,
8 Whitaker, Wilkinson, Womack
9

For An Act To Be Entitled

12 AN ACT TO AUTHORIZE THE ARKANSAS STATE HIGHWAY
13 COMMISSION TO ISSUE FEDERAL HIGHWAY GRANT
14 ANTICIPATION AND TAX REVENUE BONDS FOR THE
15 PURPOSES OF CONSTRUCTING AND RENOVATING ROADS AND
16 HIGHWAYS; PROVIDING FOR A STATEWIDE ELECTION ON
17 THE QUESTION OF ISSUING BONDS; DECLARING AN
18 EMERGENCY; AND FOR OTHER PURPOSES.
19

Subtitle

21 "ARKANSAS INTERSTATE HIGHWAY FINANCING
22 ACT OF 2007."
23
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 may be referred to and cited as the "Arkansas
31 Interstate Highway Financing Act of 2007."
32

33 27-64-402. Findings.

34 (a) The General Assembly of the State of Arkansas has determined that
35 there is an immediate need for highway improvements throughout the State of
36 Arkansas in order to provide for the health, safety and welfare of its



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

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

17
18 27-64-403. Definitions.

19 As used in this subchapter:

20 (1) "Act" shall mean this Arkansas Interstate Highway Financing
21 Act of 2007;

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

25 (3) "Commission" shall mean the State Highway Commission,
26 created and existing pursuant to Amendment 42 to the Constitution of the
27 State of Arkansas;

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

33 (5) "Designated revenues" shall mean:

34 (A) That portion designated by the Commission of funds
35 received or to be received from the federal government as federal highway
36 assistance funding allocated to the State designated as federal highway

1 interstate maintenance funds; and

2 (B) Revenues derived from the increase in taxes levied on
3 distillate special fuels pursuant to the Arkansas Distillate Special Fuel
4 Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999; and

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

11
12 27-64-404. Authorization – Purposes.

13 The State Highway Commission is hereby authorized, subject to the
14 approval of the voters in a state-wide election, to issue bonds from time to
15 time provided that the total principal amount outstanding from the issuance
16 of the bonds, together with the total principal amount outstanding from the
17 issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall
18 not, at any time, exceed five hundred seventy-five million dollars
19 (\$575,000,000). The bonds will be issued in one or more series of various
20 principal amounts, with the last series being issued no later than December
21 31, 2013. The bonds shall be issued for following purposes:

22 (1) Accelerating interstate highway improvement projects already
23 underway or scheduled;

24 (2) Funding new interstate highway improvement projects;

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

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

29
30 27-64-405. Election.

31 (a) No bonds shall be issued under this Act unless the authority of
32 the State Highway Commission to issue such bonds is approved by a majority of
33 the qualified electors of the state voting on the question at a state-wide
34 election called by proclamation of the Governor. Such election may be in
35 conjunction with a general election or it may be a special election. Notice
36 of such election shall be published by the Secretary of State in a newspaper

1 of general circulation in the state at least thirty (30) days prior to such
2 election, and notice thereof shall be mailed to each county board of election
3 commissioners and the sheriff of each county at least sixty (60) days prior
4 to such election.

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

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

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

36 “Pursuant to the Bond Act, the highway improvements to be financed are

1 limited to the restoration and improvements to all of the interstate highway
2 system within the State, including roadways, bridges or rights-of-way under
3 jurisdiction of the State Highway Commission, which shall also include the
4 acquisition, construction, reconstruction and renovation of such interstate
5 highway system and facilities appurtenant or pertaining thereto.

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

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

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

36 “AGAINST authorizing the State Highway Commission to issue State of

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

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

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

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

34
 35 27-64-406. Procedure for issuing bonds.

36 Prior to the issuance of any series of bonds, the Commission shall

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

15
16 27-64-407. Terms of bonds.

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

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

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

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

33 (4) The bonds shall be issued in the form of bonds registered as
34 to both principal and interest without coupons; may be in such denominations;
35 and may be made exchangeable for bonds of another form or denomination,
36 bearing the same rate of interest; may be made payable at such places within

1 or without the state; may be made subject to redemption prior to maturity in
2 such manner and for such redemption prices; and may contain such other terms
3 and conditions, all as the Commission shall determine.

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

9
10 27-64-408. Sale of Bonds.

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

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

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

30
31 27-64-409. Employment of professionals.

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

36

1 27-64-410. Sources of repayment.

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

24
25 27-64-411. Investment of proceeds.

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

34
35 27-64-412. Refunding bonds.

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

1 previously issued pursuant to this Act; provided, however, that such bonds
2 are not issued after December 31, 2013 and that the total amount of bonds
3 outstanding after the refunding is completed does not exceed the total amount
4 authorized by this Act.

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

8
9 27-64-413. Tax Exemption.

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

15
16 27-64-414. Powers of Commission.

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

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

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

34
35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that there is an immediate need

1 for the construction, reconstruction and renovation of highways and roads
2 comprising the U.S. Interstate system within the State of Arkansas and that
3 such a program cannot be accomplished without the issuance of bonds secured
4 by federal highway assistance payments to finance the program. Therefore, an
5 emergency is declared to exist and this act being necessary for the
6 preservation of the public peace, health, and safety shall become effective
7 on:

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

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

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

14
15 */s/ Glover*
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