

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 H3/19/07

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 *By: Representatives Rosenbaum, Wills, Glidewell, L. Evans, Wyatt, Davenport, Davis, Kidd, Allen, Hoyt,*
10 *Reynolds, Shelby, House, J. Roebuck, Pierce, King, Hyde, D. Hutchinson, L. Cowling, Stewart,*
11 *Greenberg, George*
12
13

For An Act To Be Entitled

15 AN ACT TO AUTHORIZE THE ARKANSAS STATE HIGHWAY
16 COMMISSION TO ISSUE FEDERAL HIGHWAY GRANT
17 ANTICIPATION AND TAX REVENUE BONDS FOR THE
18 PURPOSES OF CONSTRUCTING AND RENOVATING ROADS AND
19 HIGHWAYS; PROVIDING FOR A STATEWIDE ELECTION ON
20 THE QUESTION OF ISSUING BONDS; DECLARING AN
21 EMERGENCY; AND FOR OTHER PURPOSES.
22

Subtitle

23 "ARKANSAS INTERSTATE HIGHWAY FINANCING
24 ACT OF 2007."
25
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

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

32 27-64-401. Title.

33 This subchapter may be referred to and cited as the "Arkansas
34 Interstate Highway Financing Act of 2007."
35

36 27-64-402. Findings.



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

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

20
21 27-64-403. Definitions.

22 As used in this subchapter:

23 (1) "Act" shall mean this Arkansas Interstate Highway Financing
24 Act of 2007;

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

28 (3) "Commission" shall mean the State Highway Commission,
29 created and existing pursuant to Amendment 42 to the Constitution of the
30 State of Arkansas;

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

36 (5) "Designated revenues" shall mean:

1 (A) That portion designated by the Commission of funds
2 received or to be received from the federal government as federal highway
3 assistance funding allocated to the State designated as federal highway
4 interstate maintenance funds; and

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

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

14
15 27-64-404. Authorization – Purposes.

16 The State Highway Commission is hereby authorized, subject to the
17 approval of the voters in a state-wide election, to issue bonds from time to
18 time provided that the total principal amount outstanding from the issuance
19 of the bonds, together with the total principal amount outstanding from the
20 issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall
21 not, at any time, exceed five hundred seventy-five million dollars
22 (\$575,000,000). The bonds will be issued in one or more series of various
23 principal amounts, with the last series being issued no later than December
24 31, 2013. The bonds shall be issued for following purposes:

25 (1) Accelerating interstate highway improvement projects already
26 underway or scheduled;

27 (2) Funding new interstate highway improvement projects;

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

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

32
33 27-64-405. Election.

34 (a) No bonds shall be issued under this Act unless the authority of
35 the State Highway Commission to issue such bonds is approved by a majority of
36 the qualified electors of the state voting on the question at a state-wide

1 election called by proclamation of the Governor. Such election may be in
2 conjunction with a general election or it may be a special election. Notice
3 of such election shall be published by the Secretary of State in a newspaper
4 of general circulation in the state at least thirty (30) days prior to such
5 election, and notice thereof shall be mailed to each county board of election
6 commissioners and the sheriff of each county at least sixty (60) days prior
7 to such election.

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

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

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

1 the general revenues of the State of Arkansas. The bonds shall be issued
2 pursuant to the authority of and the terms set forth in the Bond Act.

3 “Pursuant to the Bond Act, the highway improvements to be financed are
4 limited to the restoration and improvements to all of the interstate highway
5 system within the State, including roadways, bridges or rights-of-way under
6 jurisdiction of the State Highway Commission, which shall also include the
7 acquisition, construction, reconstruction and renovation of such interstate
8 highway system and facilities appurtenant or pertaining thereto.

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

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

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

1 December 31, 2013 and to be secured by the full faith and credit of the State
2 of Arkansas. . . . []”

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

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

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

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

1
2 27-64-406. Procedure for issuing bonds.

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

18
19 27-64-407. Terms of bonds.

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

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

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

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

36 (4) The bonds shall be issued in the form of bonds registered as

1 to both principal and interest without coupons; may be in such denominations;
2 and may be made exchangeable for bonds of another form or denomination,
3 bearing the same rate of interest; may be made payable at such places within
4 or without the state; may be made subject to redemption prior to maturity in
5 such manner and for such redemption prices; and may contain such other terms
6 and conditions, all as the Commission shall determine.

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

12
13 27-64-408. Sale of Bonds.

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

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

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

33
34 27-64-409. Employment of professionals.

35 The Commission is authorized to retain such professionals as it deems
36 necessary to accomplish the issuance and sale of the bonds, including,

1 without limitation, legal counsel, financial advisors, underwriters,
2 trustees, paying agents and remarketing agents.

3
4 27-64-410. Sources of repayment.

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

27
28 27-64-411. Investment of proceeds.

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

1
2 27-64-412. Refunding bonds.

3 (a) The Commission may issue bonds for the purpose of refunding bonds
4 previously issued pursuant to this Act; provided, however, that such bonds
5 are not issued after December 31, 2013 and that the total amount of bonds
6 outstanding after the refunding is completed does not exceed the total amount
7 authorized by this Act.

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

11
12 27-64-413. Tax Exemption.

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

18
19 27-64-414. Powers of Commission.

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

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

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

