

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

SENATE BILL 75

5 By: Senator M. Johnson  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE PROVISIONS OF ARKANSAS  
9 CONSTITUTION, AMENDMENTS 91 AND 101, TO PROVIDE THAT  
10 PROCEEDS GENERATED UNDER ARKANSAS CONSTITUTION,  
11 AMENDMENT 91, MAY BE APPLIED TO MULTILANE HIGHWAY  
12 IMPROVEMENTS; TO AMEND ARKANSAS CONSTITUTION,  
13 AMENDMENTS 91 AND 101, PURSUANT TO THE AUTHORITY  
14 GRANTED BY ARKANSAS CONSTITUTION, ARTICLE 5, § 1; TO  
15 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
16  
17

## Subtitle

18 TO AMEND THE PROVISIONS OF ARKANSAS  
19 CONSTITUTION, AMENDMENTS 91 AND 101, TO  
20 PROVIDE THAT PROCEEDS MAY BE APPLIED TO  
21 MULTILANE HIGHWAY IMPROVEMENTS; AND TO  
22 DECLARE AN EMERGENCY.  
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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

28 SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.

29 (a) The General Assembly finds:

30 (1) Arkansas Constitution, Article 5, § 1, provides that "[n]o  
31 measure approved by a vote of the people shall be amended or repealed by the  
32 General Assembly. . . except upon a yea and nay vote on roll call of two-  
33 thirds of all the members elected to each house of the General Assembly. .  
34 .";

35 (2) Arkansas Constitution, Article 5, § 1, defines "measure" to  
36 include any bill, law, resolution, ordinance, charter, constitutional



1 amendment or legislative proposal or enactment of any character;

2 (3) The plain language of the definition of "measure" in  
3 Arkansas Constitution, Article 5, § 1, clearly includes amendments to the  
4 Arkansas Constitution, meaning that the General Assembly may amend amendments  
5 to the Arkansas Constitution with a two-thirds vote of each house;

6 (4) Despite observing that the definition of "measure" in  
7 Arkansas Constitution, Article 5, § 1 includes "constitutional amendment(s)  
8 'or legislative proposals of any character'", the Supreme Court in Arkansas  
9 Game and Fish Commission v. Edgmon, 218 Ark. 207, 235 S.W.2d 554 (1951),  
10 declined to construe the language literally and held that the General  
11 Assembly lacked the power to amend or repeal amendments to the Arkansas  
12 Constitution by a two-thirds vote of each house;

13 (5) In Board of Trustees of the University of Arkansas v.  
14 Andrews, 2018 Ark. 12 (2018), the Supreme Court overturned years of precedent  
15 by holding that the General Assembly cannot waive by law the state's  
16 sovereign immunity granted by Arkansas Constitution, Article 5, § 20;

17 (6) In reaching its decision in Andrews, supra, the Supreme  
18 Court held that the language of Arkansas Constitution, Article 5, § 20,  
19 should be interpreted "precisely as it reads";

20 (7) In Buonaiuto v. Gibson, 2020 Ark. 352, the Arkansas Supreme  
21 Court noted that the phrase "four-lane highway" as used in Arkansas  
22 Constitution, Amendment 91, had been "given a specific meaning that is plain  
23 and unambiguous" and thus funds under Arkansas Constitution, Amendment 91,  
24 could not be used to improve six-lane portions of interstate highways; and

25 (8) An interpretation of Arkansas Constitution, Article 5, § 1,  
26 "precisely as it reads" clearly leads to the conclusion that the General  
27 Assembly may amend all measures, including constitutional amendments, by a  
28 two-thirds vote of each house, as the term "measure" has been given a plain  
29 and unambiguous definition in Arkansas Constitution, Article 5, § 1.

30 (b) By the passage of this act, the General Assembly expresses its  
31 belief that, upon consideration of this act using the standard of review  
32 established in Andrews, supra, the Supreme Court will:

33 (1) Interpret Arkansas Constitution, Article 5, § 1, precisely  
34 as it reads in consideration of its plain and unambiguous language;

35 (2) Overturn its decision in Edgmon, supra, as inconsistent with  
36 its holding in Andrews, supra, and Buonaiuto, supra; and

1           (3) Uphold the constitutional authority of the General Assembly  
2 under Arkansas Constitution, Article 5, § 1, to amend or repeal amendments to  
3 the Arkansas Constitution by a two-thirds vote of each house.

4  
5           SECTION 2. Pursuant to the authority granted by Arkansas Constitution,  
6 Article 5, § 1, Arkansas Constitution, Amendment 91, §§ 1 and 2 are amended  
7 to read as follows:

8           § 1. Intent.

9           The people of the State of Arkansas find that:

10           (a) The state has an outdated and inadequate system of highway  
11 funding that is unable to meet the severe and pressing needs to maintain and  
12 improve the state’s system of state highways, county roads, and city streets;

13           (b) Increasing investment in the state highway system, county  
14 roads, and city streets will create jobs, aid in economic development,  
15 improve quality of life, and provide additional transportation  
16 infrastructure, including specifically, a ~~four-lane~~ multilane highway  
17 construction plan designed to connect all regions of the state; and

18           (c) To provide additional funding for the state’s ~~four-lane~~  
19 multilane highway system, county roads, and city streets, this amendment  
20 levies a temporary sales and use tax and authorizes general obligation  
21 highway construction and improvement bonds for the state’s ~~four-lane~~  
22 multilane highway system.

23  
24           § 2. Definitions.

25           As used in this amendment:

26           (a) “Bonds” means the State of Arkansas General Obligation ~~Four-~~  
27 ~~Lane~~ Multilane Highway Construction and Improvement Bonds as authorized in  
28 this amendment;

29           (b) “Chairman” means the chair of the Arkansas Highway  
30 Commission;

31           (c) “Chief fiscal officer” means the Director of the Department  
32 of Finance and Administration;

33           (d) “Commission” means the State Highway Commission;

34           (e) “Debt service” means all amounts required for the payment of  
35 principal of, interest on, and premium, if any, due with respect to the bonds  
36 in any fiscal year, along with all associated costs, including without

1 limitation the fees and costs of paying agents and trustees, and remarketing  
 2 agent fees;

3 (f) "Designated tax revenues" means:

4 (1) Taxes collected under this amendment and apportioned  
 5 to the Arkansas State Highway and Transportation Department Fund under § 27-  
 6 70-206 collected over an approximate ten-year period; and

7 (2) Other fees or taxes that are dedicated to the  
 8 repayment of the bonds; and

9 (g)(1) "~~Four-lane~~ Multilane highway improvements" means  
 10 construction of and improvements to:

- 11 (A) ~~Four-lane~~ Multilane roadways;
- 12 (B) Bridges;
- 13 (C) Tunnels;
- 14 (D) Engineering;
- 15 (E) Rights-of-way; and
- 16 (F) Other related capital improvements and

17 facilities appurtenant or pertaining thereto, including costs of rights-of-  
 18 way acquisition and utility adjustments.

19 (2) "~~Four-lane~~ Multilane highway improvements" also means  
 20 the maintenance of ~~four-lane~~ multilane highway improvements constructed with  
 21 proceeds of the bonds.

22  
 23 SECTION 3. Pursuant to the authority granted by Arkansas Constitution,  
 24 Article 5, § 1, Arkansas Constitution, Amendment 91, § 4(a), concerning the  
 25 authorization and purpose of general obligation bonds under Arkansas  
 26 Constitution, Amendment 91, is amended to read as follows:

27 (a) The State Highway Commission may issue State of Arkansas ~~Four-Lane~~  
 28 Multilane Highway Construction and Improvement General Obligation Bonds  
 29 ('bonds') in a total principal amount not to exceed one billion, three  
 30 hundred million dollars (\$1,300,000,000) for the purpose of:

31 (1) Accelerating ~~four-lane~~ multilane highway improvements in  
 32 progress or scheduled as of January 1, 2011;

33 (2) Funding new ~~four-lane~~ multilane highway improvements not in  
 34 progress or scheduled as of January 1, 2011;

35 (3) Providing matching funds in connection with federal highway  
 36 programs for ~~four-lane~~ multilane highway improvements; and

1 (4) Paying the costs of issuance of the bonds.  
2

3 SECTION 4. Pursuant to the authority granted by Arkansas Constitution,  
4 Article 5, § 1, Arkansas Constitution, Amendment 91, § 5, is amended to read  
5 as follows:

6 § 5. Use of proceeds.

7 (a) There is established on the books of the Treasurer of State,  
8 Auditor of State, and the chief fiscal officer of the State a special account  
9 within the State Highway and Transportation Department Fund to be designated  
10 as the Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond  
11 Account.

12 (b)(1) On the last day of each month, the Treasurer of State, after  
13 making the deductions required from the net special revenues as set out in §  
14 19-5-203(b)(1), shall transfer the revenues derived by the one-half cent  
15 (0.5¢) taxes levied under this amendment to the State Highway and  
16 Transportation Department Fund, the County Aid Fund and the Municipal Aid  
17 Fund in the percentages provided in the Arkansas Highway Revenue Distribution  
18 Law, § 27-70-201 and § 27-70-206.

19 (2) The proceeds of the excise taxes transferred to the State  
20 Highway and Transportation Department Fund shall be set aside and transferred  
21 to the Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond  
22 Account and used for the purposes provided for in this amendment.

23 (3) The tax revenues accruing from this amendment shall not be  
24 designated as special revenues for deposit to the Arkansas Department of  
25 Aeronautics Fund under § 27-115-110.  
26

27 SECTION 5. Pursuant to the authority granted by Arkansas Constitution,  
28 Article 5, § 1, Arkansas Constitution, Amendment 91, § 7, is amended to read  
29 as follows:

30 § 7. Effective Date - Use of funds.

31 (a) The taxes levied by this amendment shall not become effective  
32 until after a majority of the qualified electors of the state voting on the  
33 question approve the issuance of ~~Four-Lane~~ Multilane Highway Construction and  
34 Improvement General Obligation Bonds to be repaid in part by the taxes levied  
35 by this amendment and deposited to the Arkansas ~~Four-Lane~~ Multilane Highway  
36 Construction and Improvement Bond Account in the State Highway and

1 Transportation Department Fund.

2 (b) If the tax levies and the issuance of the bonds are approved, the  
3 effective date of the temporary taxes levied by this amendment shall be July  
4 1, 2013.

5 (c) Taxes levied by this amendment may be used for the purposes  
6 provided for in this amendment, including without limitation the funding of  
7 new multilane highway improvements, regardless of when the taxes were  
8 collected.

9  
10 SECTION 6. Pursuant to the authority granted by Arkansas Constitution,  
11 Article 5, § 1, Arkansas Constitution, Amendment 91, § 10(2), concerning the  
12 procedures for issuing bonds under Arkansas Constitution, Amendment 91, is  
13 amended to read as follows:

14 (2) The commission shall present a report to the Governor that  
15 includes the:

16 (A) Highway construction and improvements to be financed  
17 with the proceeds of such series of bonds;

18 (B) Estimated cost of the ~~four-lane~~ multilane highway  
19 construction and improvements;

20 (C) Amount of bonds necessary to finance such ~~four-lane~~  
21 multilane highway construction and improvements; and

22 (D) Estimated amount of debt service required to pay the  
23 bonds;

24  
25 SECTION 7. Pursuant to the authority granted by Arkansas Constitution,  
26 Article 5, § 1, Arkansas Constitution, Amendment 91, § 11(a)(1), concerning  
27 the terms of bonds issued under Arkansas Constitution, Amendment 91, is  
28 amended to read as follows:

29 (a)(1) The bonds shall be issued in series as provided for in this  
30 section in amounts sufficient to finance all or part of the costs of ~~four-~~  
31 ~~lane~~ multilane highway construction and improvements provided under Section  
32 10 of this amendment.

33  
34 SECTION 8. Pursuant to the authority granted by Arkansas Constitution,  
35 Article 5, § 1, Arkansas Constitution, Amendment 91, § 15(a)(2), concerning  
36 the general obligation status of bonds issued under Arkansas Constitution,

1 Amendment 91, is amended to read as follows:

2 (2) The bonds shall be payable from:

3 (A) The Arkansas ~~Four-Lane~~ Multilane Highway Construction  
4 and Improvement Bond Account; and

5 (B) General revenues of the state as that term is defined  
6 in the Revenue Stabilization Law, § 19-5-101 et seq.

7

8 SECTION 9. Pursuant to the authority granted by Arkansas Constitution,  
9 Article 5, § 1, Arkansas Constitution, Amendment 91, § 16, is amended to read  
10 as follows:

11 § 16. Sources of repayment.

12 (a) Without in any way limiting the general obligation of the state to  
13 repay the bonds, the designated tax revenues are pledged to the payment of  
14 the debt service on the bonds.

15 (b)(1) The Treasurer of State shall establish in the State Highway and  
16 Transportation Department a special account known as the Arkansas ~~Four-Lane~~  
17 Multilane Highway Construction and Improvement Bond Account.

18 (2) The Treasurer of State shall deposit in the Arkansas ~~Four-~~  
19 ~~Lane~~ Multilane Highway Construction and Improvement Bond Account all  
20 designated tax revenues.

21 (3) The commission may pledge to the repayment of the bonds the  
22 full faith and credit of the state and may grant a lien upon the funds on  
23 deposit in the Arkansas ~~Four-Lane~~ Multilane Highway Construction and  
24 Improvement Bond Account.

25 (c)(1) On or before commencement of each fiscal year, the commission  
26 in consultation with the chief fiscal officer shall determine the estimated  
27 amount required for payment of debt service due on each series of bonds  
28 issued and outstanding under this amendment during the fiscal year and shall  
29 certify the estimated amount to the Treasurer of State.

30 (2) The Treasurer of State shall then make transfers from the  
31 Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond  
32 Account in the State Highway and Transportation Department Fund to the  
33 trustees of each series of bonds, in such amounts and at such times as shall  
34 be specified in the indentures, to:

35 (A) Pay the maturing debt service on each series of bonds  
36 issued and outstanding under this amendment; and

1 (B) Establish and maintain with the trustee for each  
2 series of bonds a reserve or reserves for payment of debt service on each  
3 series of bonds.

4 (d) The obligation to make transfers from the Arkansas ~~Four-Lane~~  
5 Multilane Highway Construction and Improvement Bond Account in the State  
6 Highway and Transportation Department Fund for the payment of debt service  
7 on, and, if applicable, a reserve for, each series of bonds is a first charge  
8 against amounts on deposit.

9 (e) Funds on deposit in the Arkansas ~~Four-Lane~~ Multilane Highway  
10 Construction and Improvement Bond Account in the State Highway and  
11 Transportation Department Fund that are in excess of the obligations set  
12 forth in (d) above may be used to:

13 (1) Redeem bonds prior to maturity in the manner and in  
14 accordance with the provisions pertaining to redemption prior to maturity as  
15 set forth in the trust indentures authorizing or securing each series of  
16 bonds; or

17 (2) Fund additional ~~four-lane~~ multilane highway construction and  
18 improvements in the manner and in accordance with the provisions set forth in  
19 the trust indentures authorizing or securing each series of bonds.

20 (f) If there are insufficient amounts in the Arkansas ~~Four-Lane~~  
21 Multilane Highway Construction and Improvement Bond Account in the State  
22 Highway and Transportation Department Fund to pay the debt service on bonds  
23 issued and outstanding under this amendment or to fund any necessary reserves  
24 at the required level, the State Treasurer shall transfer additional amounts  
25 to the Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond  
26 Account in the State Highway and Transportation Department Fund from the  
27 general revenues of the State.

28  
29 SECTION 10. Pursuant to the authority granted by Arkansas  
30 Constitution, Article 5, § 1, Arkansas Constitution, Amendment 91, § 17(a),  
31 concerning the investment of revenues in the Arkansas Four-Lane Highway  
32 Construction and Improvement Bond Account, is amended to read as follows:

33 (a) Moneys held in the Arkansas ~~Four-Lane~~ Multilane Highway  
34 Construction and Improvement Bond Account in the State Highway and  
35 Transportation Department Fund and any fund in the State Treasury created  
36 under this amendment shall be invested by the State Board of Finance to the



1 full extent practicable pending disbursement for the purposes intended.

2  
3 SECTION 11. Pursuant to the authority granted by Arkansas  
4 Constitution, Article 5, § 1, Arkansas Constitution, Amendment 91, § 22, is  
5 repealed.

6 ~~§ 22. Form of submission to the electors.~~

7 ~~The proposition set forth shall be submitted for approval or rejection~~  
8 ~~by the electors in substantially the following form:~~

9 ~~“A TEMPORARY ONE HALF PERCENT (0.5%) SALES AND USE TAX FOR STATE HIGHWAYS AND~~  
10 ~~BRIDGES, COUNTY ROADS, BRIDGES AND OTHER SURFACE TRANSPORTATION, AND CITY~~  
11 ~~STREETS, BRIDGES AND OTHER SURFACE TRANSPORTATION, WITH THE STATE’S PORTION~~  
12 ~~TO SECURE STATE OF ARKANSAS GENERAL OBLIGATION FOUR LANE HIGHWAY CONSTRUCTION~~  
13 ~~AND IMPROVEMENT BONDS AND PERMANENTLY DEDICATING ONE CENT (1¢) PER GALLON OF~~  
14 ~~THE PROCEEDS DERIVED FROM THE EXISTING MOTOR FUEL AND DISTILLATE FUEL TAXES~~  
15 ~~TO THE STATE AID STREET FUND”~~

16 ~~On each ballot there shall be printed the following:~~

17 ~~“FOR a proposed constitutional amendment to levy a temporary sales and~~  
18 ~~use tax of one half percent (0.5%) for state highways and bridges, county~~  
19 ~~roads, bridges and other surface transportation, and city streets, bridges~~  
20 ~~and other surface transportation, with the state’s portion to secure State of~~  
21 ~~Arkansas General Obligation Four Lane Highway Construction and Improvement~~  
22 ~~Bonds in the total principal amount not to exceed \$1,300,000,000 for the~~  
23 ~~purpose of constructing and improving four lane highways in the State of~~  
24 ~~Arkansas, prescribing the terms and conditions for the issuance of such bonds~~  
25 ~~which will mature and be paid in full in approximately ten (10) years, which~~  
26 ~~payment in full shall terminate the temporary sales and use tax, describing~~  
27 ~~the sources of repayment of the bonds and permanently dedicating one cent~~  
28 ~~(1¢) per gallon of the proceeds derived from the existing motor fuel and~~  
29 ~~distillate fuel taxes to the State Aid Street Fund.”~~

30 ~~“AGAINST a proposed constitutional amendment to levy a temporary sales~~  
31 ~~and use tax of one half percent (0.5%) for state highways and bridges, county~~  
32 ~~roads, bridges and other surface transportation, and city streets, bridges~~  
33 ~~and other surface transportation, with the state’s portion to secure State of~~  
34 ~~Arkansas General Obligation Four Lane Highway Construction and Improvement~~  
35 ~~Bonds in the total principal amount not to exceed \$1,300,000,000 for the~~  
36 ~~purpose of constructing and improving four lane highways in the State of~~

1 ~~Arkansas, prescribing the terms and conditions for the issuance of such bonds~~  
 2 ~~which will mature and be paid in full in approximately ten (10) years, which~~  
 3 ~~payment in full shall terminate the temporary sales and use tax, describing~~  
 4 ~~the sources of repayment of the bonds and permanently dedicating one cent~~  
 5 ~~(1¢) per gallon of the proceeds derived from the existing motor fuel and~~  
 6 ~~distillate fuel taxes to the State Aid Street Fund.”~~

7  
 8 SECTION 12. Pursuant to the authority granted by Arkansas  
 9 Constitution, Article 5, § 1, Arkansas Constitution, Amendment 101, § 1(a),  
 10 concerning the intent of Arkansas Constitution, Amendment 101, is amended to  
 11 read as follows:

12 (a) Arkansas Constitution, Amendment 91, levies a one-half percent  
 13 sales and use tax to provide additional funding for the state’s ~~four-lane~~  
 14 multilane highway system, county roads, and city streets.

15  
 16 SECTION 13. EMERGENCY CLAUSE. It is found and determined by the  
 17 General Assembly of the State of Arkansas that the state’s highway system is  
 18 critical to the health and safety of the state as it facilitates the travel  
 19 of Arkansas citizens and other persons for business and personal matters;  
 20 Arkansas Constitution, Amendment 91, provides funding for the support of the  
 21 state’s highway system; the Arkansas Supreme Court’s interpretation of  
 22 Arkansas Constitution, Amendment 91, in Buonaiuto v. Gibson, 2020 Ark. 352,  
 23 is restrictive and inhibits the ability of the state to address and improve  
 24 the state’s highway system; and that this act is immediately necessary to  
 25 provide funding for projects that are critical to the maintenance and  
 26 improvement of the state’s highway system to protect the state’s citizens and  
 27 other visitors while travelling within the state. Therefore, an emergency is  
 28 declared to exist, and this act being immediately necessary for the  
 29 preservation of the public peace, health, and safety shall become effective  
 30 on:

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

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

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