

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: S2/19/99*

## A Bill

HOUSE BILL 1523

5 By: Representative T. Smith  
6 By: Senators Canada, Fitch  
7  
8

### For An Act To Be Entitled

10 "AN ACT TO AMEND ARKANSAS CODE 15-5-103; 15-5-403;  
11 15-5-405; 15-5-408; 15-5-409; 15-5-412 AND 15-5-1103  
12 (2) TO AUTHORIZE THE FINANCING OF TOURISM ENTERPRISES  
13 BY THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY, TO  
14 CLARIFY CERTAIN SECTIONS OF ACT 1062 OF 1985, ACT 340  
15 OF 1985, AND ACT 487 OF 1995; AND FOR OTHER PURPOSES. "  
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### Subtitle

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18 "AN ACT TO AUTHORIZE THE FINANCING OF  
19 TOURISM ENTERPRISES BY THE ARKANSAS  
20 DEVELOPMENT FINANCE AUTHORITY, TO  
21 CLARIFY CERTAIN SECTIONS OF ACT 1062 OF  
22 1985, ACT 340 OF 1985, AND ACT 487 OF  
23 1995. "  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code 15-5-103 (13) is amended to read as follows:

29 "(13)(A) 'Industrial enterprise' means and includes facilities and  
30 operations for manufacturing, producing, processing, assembling, repairing,  
31 extracting, warehousing, distributing, communications, computer services, the  
32 production of motion pictures and like products, tourism enterprises,  
33 transportation, corporate and management offices, and services provided in  
34 connection with any of the foregoing, in isolation or in any combination, that  
35 involve the creation of new or additional employment or the retention of  
36 existing employment, and industrial parks.

1 (B) However, a shopping center, retail store or shop, or  
2 other similar undertaking which is solely or predominantly of a commercial  
3 retail nature shall not be an industrial enterprise for the purposes of this  
4 subchapter;”

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6 SECTION 2. Arkansas Code 15-5-103 is amended to add the following  
7 additional subsection:

8 “(19) ‘Tourism enterprise’ means and includes:

9 (i) cultural and historic sites, recreational and  
10 entertainment facilities, an area of natural phenomenon or scenic beauty,  
11 theme parks, amusement or entertainment parks, indoor or outdoor theatrical  
12 productions, botanical gardens, cultural or educational centers; and

13 (ii) lodging facilities which are an integrated part  
14 of any of the enterprises listed in (i) above.”

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16 SECTION 3. Arkansas Code 15-5-403 is amended to read as follows:

17 “15-5-403. Definitions.

18 As used in this subchapter, unless the context otherwise requires:

19 (1) ‘Act’ means the Arkansas Development Finance Authority Bond  
20 Guaranty Act of 1985, § 15-5-401 et seq.;

21 (2) ‘ADFA Act’ means the Arkansas Development Finance Authority  
22 Act, as amended, § 15-5-301 et seq.;

23 (3) ‘Amortization payments’ means the periodic (monthly,  
24 semiannual, annual, etc.) payments of interest, whether at a fixed or variable  
25 rate, on premium, if any, and installments of principal of qualified bonds as  
26 required by the trust indenture relating to the bonds;

27 (4) ‘Authority’ means the Arkansas Development Finance Authority;

28 (5) ‘Board’ means the board of directors of the authority;

29 (6) ‘Bond Fund’ means the Guaranty Bond Fund hereinafter  
30 authorized from which bonds issued by the authority for the purpose of meeting  
31 the obligations of the Bond Guaranty Reserve Account are payable;

32 (7) ~~‘Developer’~~ ‘Borrower’ means the individual, firm, or  
33 corporation, whether for profit or nonprofit, city, county, other political  
34 subdivision or state agency charged with developing the project under the  
35 terms of the trust indenture relating to qualified bonds;

36 (8) ‘Guaranty Reserve Account’ means the Bond Guaranty Reserve

1 Account created in this subchapter for the purpose of meeting amortization  
2 payments of qualified bonds guaranteed by the authority and for the purpose of  
3 enhancing and supporting the credit of those qualified bonds;

4 (9) 'Project' means the project for which the proceeds of  
5 qualified bonds are utilized;

6 (10) 'Qualified bonds' means revenue bonds validly issued by the  
7 authority in accordance with the provisions of the ADFA Act or by any city,  
8 county, or other political subdivision of this state;

9 (11) 'State' means the State of Arkansas;

10 (12) 'Supplemental Guaranty Reserve Account' means an account  
11 which may be established by the authority for the purpose of enhancing the  
12 Guaranty Reserve Account."

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14 SECTION 4. Arkansas Code 15-5-405 is amended to read as follows:

15 "15-5-405. When bonds may be guaranteed.

16 Amortization payments on qualified bonds may be guaranteed in instances  
17 when:

18 (1) The authority deems the utilization of the guaranty is in the  
19 best interest of the economic development of the State of Arkansas;

20 (2) The total amount of qualified bonds guaranteed at any time  
21 under this subchapter will be the lesser of:

22 (A) One hundred fifty million dollars (\$150,000,000); or

23 (B) An amount equal to ten (10) times the amount on deposit  
24 at that time in the Bond Guaranty Reserve Account;

25 (3) The ~~developer of the project~~ borrower involved is not  
26 permitted to purchase or own at any time any of such bonds;

27 (4) The ~~developer~~ borrower is found to be financially responsible  
28 and that sufficient income may reasonably be expected to amortize in an  
29 orderly manner amortization payments of the qualified bonds; and

30 (5) A financial institution participates in the financing  
31 necessary to accomplish the project; however, the authority may waive this  
32 requirement, in the exercise of its sound discretion, upon a sufficient  
33 showing by the ~~developer~~ borrower that such participation cannot be obtained  
34 or is not feasible because of justifiable circumstances, and the project  
35 involved otherwise meets the other conditions of this section and § 15-5-406."

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1 SECTION 5. Arkansas Code 15-5-408 is amended to read as follows:

2 "15-5-408. Evidence to support guaranty - Premium payment.

3 (a) Each ~~developer~~ borrower requesting a guaranty hereunder shall  
4 submit to the authority supporting documents, instruments, contractor's costs  
5 or estimated cost of improvements, land costs, and other evidence showing  
6 conformity with the ADFA Act or other law pursuant to which qualified bonds  
7 are to be or have been issued.

8 (b)(1) Each ~~developer~~ borrower receiving a guaranty hereunder shall pay  
9 a premium payment or payments to the Bond Guaranty Reserve Account as provided  
10 in this section.

11 ~~(2)(A) The initial premium payment shall be an amount equal to~~  
12 ~~two percent (2%) to five percent (5%) of the principal amount of the qualified~~  
13 ~~bonds guaranteed, payable at the time the bonds are issued.~~

14 ~~(B) An additional fee equal to up to one percent (1%) of~~  
15 ~~the outstanding principal balance may be charged over the term of the loan.~~

16 ~~(C) The amount of the premium payment shall be determined~~  
17 ~~by the authority on the basis of the relative degree of risk involved in~~  
18 ~~guaranteeing the project, as compared to other projects guaranteed, and the~~  
19 ~~term of years for which the guarantee will be outstanding.~~

20 (2) The amount and terms of the premium payment shall be  
21 determined by the authority taking into consideration the relative degree of  
22 risk involved in guaranteeing the project, and other appropriate  
23 considerations.

24 ~~(3) The authority may retain from the premium payment an amount~~  
25 ~~equal to one-half percent (0.5%) of the principal amount of the bonds to be~~  
26 ~~placed in its general fund to defray costs of the guaranty program.~~

27 ~~(c) In addition to the guaranties authorized by this subchapter on~~  
28 ~~behalf of developers, the authority is hereby authorized to guarantee the~~  
29 ~~short-term notes or bonds of state agencies, cities, counties, and other~~  
30 ~~political subdivisions for capital improvements for periods not to exceed one~~  
31 ~~(1) year. No premium payment shall be charged, but the authority may charge an~~  
32 ~~interest rate premium as a fee for guaranteeing the notes or bonds."~~

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34 SECTION 6. Arkansas Code 15-5-409 is amended to read as follows:

35 "15-5-409. Review of applications.

36 (a) All applications filed with the Arkansas Development Finance

1 Authority under the provisions of this subchapter shall first be reviewed by  
2 the appropriate designated staff officials of the authority or by a committee  
3 consisting of members of the authority for preliminary review and  
4 recommendation prior to being submitted for consideration by the authority.

5 (b) All applications submitted to the authority and all supporting  
6 documents, instruments, proposed contracts, estimated costs, or other evidence  
7 submitted therewith shall be confidential and shall not be open to public  
8 review except as provided in this subchapter, and all staff meetings or  
9 meetings of the review committee of members of the authority established for  
10 the purpose of giving preliminary review of the applications shall be  
11 confidential and shall not be open to the public.

12 (c) Upon conclusion of the preliminary review of each request for a  
13 guaranty hereunder, if the request for guaranty is submitted to the authority  
14 with a recommendation that it be approved, the application and all supporting  
15 documents, including the findings and the recommendations resulting from the  
16 staff or review committee thereof, shall be an open public record available  
17 for inspection during all regular business hours.

18 (d) In the event that an application from a ~~developer~~ borrower  
19 requesting a guaranty hereunder is not recommended for approval by the  
20 authority under this subchapter, that application and all supporting  
21 documents, including all findings and recommendations in regard thereto by the  
22 staff or review committee, shall continue to be confidential and not open to  
23 public inspection.

24 (e) The ~~developer~~ borrower shall be notified in writing of any staff or  
25 review committee determination that the application is not being submitted to  
26 the authority with a recommendation that it be approved, which notice shall  
27 advise the ~~developer~~ borrower that the application will be kept confidential  
28 unless the ~~developer~~ borrower shall, within thirty (30) days from the date of  
29 receipt of the written notice, file a petition with the authority requesting  
30 that the authority hold a hearing in regard to the application, in which event  
31 the application and all supporting documents shall become public information  
32 available for public inspection.

33 (f) The membership of a review committee, when acting in that capacity,  
34 shall never be considered to constitute a quorum of the authority for the  
35 purpose of approving an application or guaranty under this subchapter."

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1 SECTION 7. Arkansas Code 15-5-412 is amended to read as follows:.

2 "15-5-412. Guaranty agreement provision.

3 Guaranty agreements entered into by the authority under the provisions  
4 of this subchapter with respect to qualified bonds issued on behalf of any  
5 ~~developer~~ borrower shall provide, among other things:

6 (1) That the authority guarantees, and the authority is required,  
7 to use the funds on deposit in the Bond Guaranty Reserve Account to meet  
8 amortization payments as guaranteed under this subchapter as the same become  
9 due, in the event, and to the extent, the ~~developer~~ borrower is unable to meet  
10 such payments in accordance with the terms of the bond indenture when called  
11 on to do so by the trustee of the bondholders. Whenever the authority acting  
12 under the terms of the guaranty agreement deems it necessary to assume the  
13 obligation of maintenance of any project, the amortization payments of which  
14 the authority has guaranteed under the provisions of this subchapter, the  
15 authority may use funds on deposit in the Bond Guaranty Reserve Account to pay  
16 insurance and maintenance costs required for the preparation of the same and  
17 to protect the reserve account from loss, or to minimize losses, in such  
18 manner as deemed necessary and advisable by the authority;

19 (2) That the guaranty shall not be a general obligation of the  
20 authority or of the State of Arkansas, but shall be a special obligation, and  
21 in no event shall the guaranty constitute an indebtedness of the authority or  
22 of the State of Arkansas within the meaning of any constitutional or statutory  
23 limitation. Each guaranty agreement shall have plainly stated on the face  
24 thereof that the same has been entered into under the provisions of this  
25 subchapter, and that it does not constitute an indebtedness of the authority  
26 or of the State of Arkansas within any constitutional or statutory limitation,  
27 and that the full faith and credit of the State of Arkansas or any of its  
28 revenues are not pledged to meet any of the obligations of the authority under  
29 the guaranty agreement. Each agreement shall state that the obligation of the  
30 authority under the guaranty shall be limited to the funds available in the  
31 Bond Guaranty Reserve Account as authorized in this subchapter."

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33 SECTION 8. Arkansas Code 15-5-1103 (2) is amended to read as follows:

34 "(2) 'Financial institution' means all ~~state~~ banks, savings and loan  
35 associations, corporations organized pursuant to either the Arkansas  
36 Development Finance Corporation Act, § 15-4-901 et seq., as amended, or the

1 County and Regional Industrial Development Corporation Act, § 15-4-1201 et  
 2 seq., as amended, and any other financial lending institutions of this state  
 3 ~~which are or shall become depositories of state funds which agree to~~  
 4 ~~participate in the program~~ approved by the board;"

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 6 SECTION 9. All provisions of this act of a general and permanent nature  
 7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 8 Revision Commission shall incorporate the same in the Code.

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 10 SECTION 10. If any provision of this act or the application thereof to  
 11 any person or circumstance is held invalid, such invalidity shall not affect  
 12 other provisions or applications of the act which can be given effect without  
 13 the invalid provision or application, and to this end the provisions of this  
 14 act are declared to be severable.

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 16 SECTION 11. All laws and parts of laws in conflict with this act are  
 17 hereby repealed.

18 /s/ T. Smith

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