

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S4/26/21
A Bill

SENATE BILL 375

By: Senators J. Dismang, Hickey

For An Act To Be Entitled

AN ACT TO DEFINE THE MONIES TO BE AVAILABLE IN THE RESTRICTED RESERVE FUND; AND TO ALLOW THAT ADDITIONAL FUNDS MAY BE MADE AVAILABLE FOR STATE AGENCIES AND INSTITUTIONS APPROPRIATIONS; AND FOR OTHER PURPOSES

Subtitle

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

SECTION 1. DO NOT CODIFY. Legislative findings – Nonseverability.

(a) The General Assembly finds that:

(1) Determining the maximum amount of appropriation and funding for a state agency or institution each fiscal year is the prerogative of the General Assembly;

(2) Determining the maximum amount of appropriation and funding for a state agency or institution is usually accomplished by delineating the maximum amounts in the appropriation acts for the state agency or institution and in the general revenue allocations authorized for each relevant fund and fund account by amendment to the Revenue Stabilization Law, § 19-5-101 et seq.;

(3) The Restricted Reserve Fund has established procedures for



the transfer of funds to various funds and fund accounts for the efficient and effective operation of state government; and

(4) It is necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided in § 19-5-1263(c).

(b) The requirement of approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, is not a severable part of § 19-5-1263. If the requirement of approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, is ruled unconstitutional by a court of competent jurisdiction, § 19-5-1263 (c)(d) and (e) are void in their entirety.

SECTION 2. DO NOT CODIFY. TRANSFERS TO THE RESTRICTED RESERVE FUND. Immediately upon the effective date of this Act, as soon thereafter as is practical or as authorized in this Section the State Treasurer shall transfer and credit to the "Restricted Reserve Fund" or the "Rainy Day Fund" as authorized in subsection (a)(2) herein, upon certification of the amounts thereof by the Chief Fiscal Officer of the State, the following:

(a)(1) Any unobligated funds, which are set aside as authorized in Subsections (b)(2)(4)(5)(6) and (7) of Section 3 of Act 1023 of 2019, remaining in the Rainy Day Fund, on July 1, 2021;

(2) Any unobligated funds remaining in the Rainy Day Fund from funds made available Subsections (d)(1) and (2) of Section 3 of Act 1023 of 2019 shall be transferred to the Rainy Day Fund, on July 1, 2021;

(3) Any unobligated funds remaining in the Rainy Day Fund from funds made available for the Debt Obligations/Priority Rainy Day Set-Aside, for a transfer to the Economic Development Incentive Quick Action Closing Fund as authorized in subsection (b)(3) of Section 3 of Act 1023 of 2019 shall be transferred and credited to the Restricted Reserve Fund for the Quick Action Closing Fund Carry Forward Set-Aside authorized in Section 3(a)(3)(B) of this Act, on July 1, 2021;

(b) All unobligated and unallocated monies remaining in the "General Improvement Fund" or the "Development and Enhancement Fund" on June 30, 2021 which are not required to finance projects to be financed therefrom pursuant to appropriations enacted by the General Assembly, or which have not been

reappropriated or reallocated for financing from the "Development and Enhancement Fund" by the 93rd General Assembly;

(c)(1) Any unobligated or unallocated funds remaining on July 2, 2021 in the "General Revenue Allotment Reserve Fund" from monies accruing thereto which are not required to finance enactments of the 93rd General Assembly that do not expire on June 30, 2021, including all General Revenue Funds recovered from remaining fund balances;

(2) All General Revenue Funds recovered from remaining fund balances in the "General Revenue Allotment Reserve Fund" from monies accruing thereto during the 2021-2022 fiscal year which are not required to finance enactments of the 93rd General Assembly that do not expire on June 30, 2022, including all General Revenue Funds recovered from remaining fund balances;

(d) Those special revenues credited to the General Improvement Fund or the Development and Enhancement Fund from estate taxes as set out in Arkansas Code § 19-6-301(171);

(e) Other revenues as may be transferred or authorized by law.

SECTION 3. DO NOT CODIFY. RESTRICTED RESERVE FUND DISTRIBUTION AND SET-ASIDES. (a) After having transferred or set-aside the obligations as set out in §19-5-202(b)(2)(B)(iii) as determined by the Chief Fiscal Officer of the State, those funds transferred and credited to the Restricted Reserve Fund as authorized in Section 2 of this Act and any current unobligated balances in the Restricted Reserve Fund, the State Treasurer shall first set-aside one hundred seventy one million four hundred and five thousand dollars (\$171,405,000) for the "Restricted Reserve Fund Set-Asides" as enumerated in subsections (a)(1) through (a)(3) of this section, with the exception of (a)(3)(B) Quick Action Closing Fund Carry Forward Set-Aside funds to be made available as authorized in Section 2(a)(3) of this Act.

(1) Notwithstanding other provisions of law as set out in 19-5-1263(c) the Set-Asides authorized in subsections (a)(1)(A) and (B) herein shall require prior approval of the greater of three-fifths (3/5) of the quorum present or a majority of the membership by the Legislative Council during the extended recess, beginning on May 1, 2021, of the 2021 Regular Session or during the interim, or the Joint Budget Committee during a regular session, fiscal session, or extraordinary session of the General Assembly in the vote for the disbursements;

(A) Executive/Legislative 3/5 Vote Set-Aside. For transfers from time to time as determined by the Chief Fiscal Officer of the State, in a sum not to exceed \$133,500,000;

(B) State Police Vehicles 3/5 Vote Set-Aside. For transfers from time to time as determined by the Chief Fiscal Officer of the State for the Division of State Police Fund for State Police Vehicles, in a sum not to exceed \$3,000,000.

(2) Notwithstanding other provisions of law as set out in 19-5-1263(c) the Unallocated Restricted Reserve Majority Vote Set-Aside authorized in subsections (a)(2)(A) herein shall only require a majority affirmative vote as set out in the rules of the Legislative Council during the extended recess, beginning on May 1, 2021, of the 2021 Regular Session or during the interim, or the Joint Budget Committee during a regular session, fiscal session, or extraordinary session of the General Assembly for prior approval of the disbursement;

(A) Unallocated Restricted Reserve Majority Vote Set-Aside. For transfers from time to time as determined by the Chief Fiscal Officer of the State, in a sum not to exceed \$15,000,000.

(3) Notwithstanding other provisions of law the Set-Asides authorized in subsections (a)(3)(A) through (C) herein shall not be subject to the approval requirements set out 19-5-1263(c) and shall only require reporting of the date and amount of transfers;

(A) Economic Stimulus Programs Set-Aside. For transfers from time to time to the Department of Commerce Arkansas Economic Development Commission to fund or fund accounts as determined by the Chief Fiscal Officer of the State for funding for economic stimulus activities throughout the state, in a sum not to exceed \$5,800,000;

(B) Quick Action Closing Fund Carry Forward Set-Aside. To the Economic Development Incentive Quick Action Closing Fund, for incentives to attract new business and economic development to the state, for transfers from time to time from funds made available as authorized in Section 2(a)(3) of this Act;

(C) Department of Correction Lease Payments Set-Aside. For the Department of Correction to the Development and Enhancement Fund or its successor fund or fund accounts or any appropriation authorized by the General Assembly for the Department of Correction debt service payments, in a

sum not to exceed \$14,105,000.

(b) The next ten million dollars (\$10,000,000) shall be transferred to the Rainy Day Fund. This transfer to the Rainy Day Fund shall not be subject to the approval requirements set out 19-5-1263(c), however after the funds are transferred to the Rainy Day Fund those funds shall be subject to any requirements set out in law for Rainy Day Fund distributions for reporting or prior approval by the Legislative Council during the extended recess, beginning on May 1, 2021, of the 2021 Regular Session or during the interim, or the Joint Budget Committee during a regular session, fiscal session, or extraordinary session of the General Assembly.

(c) Then all remaining unobligated funds not set-aside, that are transferred or credited to the Restricted Reserve Fund and any future collections, deposits and transfers authorized in Section 2 of this Act shall be transferred and credited to the Long Term Reserve Fund.

(d) On July 1, 2023 any unobligated funds remaining in the Restricted Reserve Fund Set-Asides established in subsection (a) herein shall be transferred to the Long Term Reserve Fund.”

SECTION 4. CODE AMENDMENT. Arkansas Code § 19-5-1262 is repealed.

~~19-5-1262.— Rainy Day Fund.~~

~~(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the “Rainy Day Fund”.~~

~~(b) The Rainy Day Fund shall consist of:~~

~~(1) Funds transferred to the Rainy Day Fund from the General Improvement Fund or its successor fund or fund accounts, including the Development and Enhancement Fund;~~

~~(2) Attorney General settlement funds;~~

~~(3) Interagency transfers of funds to the Rainy Day Fund;~~

~~(4) Any revenues provided by law; and~~

~~(5) Any other funds and fund transfers provided for by law.~~

~~(c) The Chief Fiscal Officer of the State shall use the Rainy Day Fund for transfers to:~~

~~(1)(A) Provide funding for one (1) or more~~

~~appropriations or reappropriations enacted by the General Assembly from the General Improvement Fund or its successor fund or fund accounts, including the Development and Enhancement Fund.~~

~~(B) At the time of a transfer under subdivision (c)(1)(A) of this section, the Chief Fiscal Officer of the State shall notify the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, of the transfer of funds, the amount of funds transferred, and the purpose of the transfer; and~~

~~(2) One (1) or more funds or fund accounts authorized by the General Assembly, other than the General Improvement Fund or its successor fund or fund accounts, including the Development and Enhancement Fund, upon prior approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.~~

SECTION 5. EFFECTIVE DATE. Section 4 of this act is effective on and after December 31, 2022 and any remaining unobligated balances in the Rainy Day Fund shall be transferred to the Long Term Reserve Fund at that time.

SECTION 6. CODE AMENDMENT. Arkansas Code § 19-5-406, concerning the transfer of remaining general revenues is amended to read as follows:
19-5-406. Transfer of remaining revenues.

After making the maximum annual allocation as provided for in § 19-5-402:

(1) The first two hundred million shall be distributed as follows:

~~(1)(A)~~ (A) Seventy-five percent (75%) of the remaining general revenues available for distribution during each fiscal year shall be transferred on the last day of business in each calendar month to the General Revenue Allotment Reserve Fund, there to be used for the respective purposes as provided by law; and

~~(2)(B)~~ (B) Twenty-five percent (25%) of the remaining general revenues available for distribution during each fiscal year shall be transferred on the last day of business in each calendar month to the ~~Arkansas Highway Transfer Fund~~ State Highway and Transportation Department Fund.

(2) Any additional revenues available after the distributions in subsection (1) shall be transferred on the last day of business in each calendar month to the General Revenue Allotment Reserve Fund, there to be used for the respective purposes as provided by law.

SECTION 7. Arkansas Code § 19-5-1263(c) and (d), concerning the Restricted Reserve Fund, are amended to read as follows:

(c) For the purpose of and after meeting the requirements of subsection (d) of this section, the Chief Fiscal Officer of the State may from time to time transfer on his or her books and those of the Treasurer of State and the Auditor of State funds from the Restricted Reserve Fund to one (1) or more general revenue operating funds or fund accounts, the Miscellaneous Agencies Fund Account, the Arkansas Department of Transportation for state matching funds, ~~and the State Central Services Fund, the Development and Enhancement Fund, and any fund, fund account, or appropriations authorized by the General Assembly~~ upon prior approval of the greater of three-fifths (3/5) of the quorum present or a majority of the membership of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(d)(1) If at any time during the fiscal year a department, state agency, board, commission, state institution of higher education, or constitutional officer determines that it is necessary to perform its duties or is in the best interest of the citizens of the State of Arkansas to request a transfer from the Restricted Reserve Fund, that entity shall submit a detailed request in writing to the Chief Fiscal Officer of the State stating:

- (A) The need and purpose of the transfer;
- (B) Efforts to find efficiencies and savings prior to making the request;
- (C) Current year-to-date budget and expenditures by line item; and
- (D) A detailed line item budget reflecting proposed expenditures in the amount requested.

(2) The Chief Fiscal Officer of the State may request additional information to make a determination and may then approve, modify, or deny the request.

(3) Upon the determination by the Chief Fiscal Officer of the State that a transfer is necessary, the Chief Fiscal Officer of the State shall submit the entity's request and his or her recommendation for approval as required in subsection (c) of this section.

SECTION 8. DO NOT CODIFY. Conditions and Audit. (a) Transfer of funds from the "Restricted Reserve Fund" shall be made only after the Chief Fiscal Officer of the State has determined that all criteria or pre-conditions established in the appropriation act to receive the transfer have been met and that a Method of Finance has been filed with the Office of Accounting in the Department of Finance and Administration, if required.

(b) Any matching funds as may be provided in law shall be certified to the Chief Fiscal Officer of the State prior to the commencement of the project.

(c) Any recipient of the funds appropriated herein are also subject to an audit by the Arkansas Legislative Audit of the Legislative Joint Auditing Committee in order to determine that the use of the funds was in compliance with the intent and appropriated purposes of the General Assembly.

SECTION 9. DO NOT CODIFY. Funding Authority. (a) Any enactment of the 93rd General Assembly in either regular, fiscal or extraordinary session appropriating, transferring or allocating funds to the "Restricted Reserve Fund" may be deemed to be payable from the "Restricted Reserve Fund".

(b) Appropriations which are not enumerated in this Act may be financed from monies accruing to the "Restricted Reserve Fund" to fund appropriations authorized by the General Assembly and as set out in law.

SECTION 10. EMERGENCY CLAUSE. It is found and determined by the General Assembly that the effectiveness of this Act on the date of its passage and approval is essential to allow transfers which can provide an additional funding mechanism for the operation of state departments, agencies and institutions of higher education, as well as to address unforeseen needs of the state through the disbursement of state funds with the Restricted Reserve Fund as authorized in this Act, and that in the event of an extension of the Session, the delay in the effective date of this Act beyond the date of its passage and approval could work irreparable harm upon the proper transfer of funds, administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval.

If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/J. Dismang

APPROVED: 4/29/21