

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/10/17
A Bill

HOUSE BILL 1726

By: Representative D. Douglas

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS HIGHWAY MAINTENANCE AND CONSTRUCTION BOND ACT OF 2017; TO AUTHORIZE BY A VOTE OF THE PEOPLE THE STATE HIGHWAY COMMISSION TO ISSUE GENERAL OBLIGATION BONDS; TO REQUIRE THAT THE BONDS BE ISSUED FOR THE PURPOSES OF MAINTAINING, REPAIRING, RENOVATING, AND CONSTRUCTING HIGHWAYS, ROADS, AND BRIDGES FOR THE CITIZENS OF THE STATE OF ARKANSAS; TO REQUIRE THAT THE BONDS BE PAID FIRST FROM DESIGNATED REVENUES FROM FUEL TAXES LEVIED BY THE GENERAL ASSEMBLY TO BE USED FOR THAT PURPOSE; TO AUTHORIZE THE REPAYMENT OF BONDS TO BE GUARANTEED BY THE FULL FAITH AND CREDIT OF THE STATE; TO PROVIDE A TIME PERIOD DURING WHICH THE ARKANSAS STATE HIGHWAY COMMISSION MAY ISSUE BONDS UNDER THIS ACT; TO PRESCRIBE THE TERMS AND CONDITIONS OF THE ISSUANCE OF THE BONDS; TO PROVIDE FOR A STATEWIDE ELECTION ON THE *QUESTION OF ISSUING THE BONDS; AND FOR OTHER PURPOSES.*

Subtitle

*TO CREATE THE ARKANSAS HIGHWAY
MAINTENANCE AND CONSTRUCTION BOND ACT OF
2017.*

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

SECTION 1. Arkansas Code Title 27, Chapter 64 is amended to add a new



subchapter to read as follows:

Subchapter 6 – Arkansas Highway Maintenance and Construction Bond Act of 2017

27-64-601. Title.

This subchapter shall be known and may be cited as the “Arkansas Highway Maintenance and Construction Bond Act of 2017”.

27-64-602. Legislative findings.

The General Assembly finds that:

(1) There is an immediate need for highway maintenance and improvements throughout the State of Arkansas in order to provide for the safety, health, and welfare of the citizens of the state and to promote private-sector job creation and advance general economic development within the state;

(2) Although progress has been made in improving the condition of the highways of this state, further improvements are needed to promote private-sector job creation and advance the economic welfare of the state;

(3) Continued improvement of the state highway system is necessary, and the best way to accomplish the improvements expeditiously is through the issuance of additional general obligation bonds to finance highway improvements;

(4) Bonds should be payable from revenues designated to the 2017 Highway Maintenance and Construction Bond Account within the State Highway and Transportation Department Fund under §§ 26-64-101 and 26-64-102 and other funds made available by appropriation from the General Assembly for that purpose; and

(5) The repayment of the bonds should be guaranteed by the full faith and credit of the state.

27-64-603. Definitions.

As used in this subchapter:

(1) “Bonds” means the 2017 Arkansas Highway Maintenance and Construction Bonds authorized and issued under this subchapter;

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

fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(3) "Designated revenues" means:

(A) The portion of funds received or to be received from amounts deposited in accordance with state law into the 2017 Highway Maintenance and Construction Bond Account of the State Highway and Transportation Department Fund from the taxes levied under §§ 26-64-101 and 26-64-102; and

(B) Any other funds appropriated by the General Assembly for repayment of the bonds; and

(4) "Highway improvements" or "highway improvement projects" means the maintenance, restoration, rehabilitation, improvements, and construction of the highway systems within Arkansas, including without limitation roadways, bridges, facilities, or rights-of-way under the jurisdiction of the State Highway Commission.

27-64-604. Authorization – Purposes – Sunset.

(a)(1) Subject to the one-time approval of the voters in *the 2018 general* election, the State Highway Commission may issue bonds as authorized under this subchapter.

(2) The bonds shall be issued in one (1) or more series of various principal amounts.

(b) The purposes of the bonds are to:

(1) Finance the maintenance, preservation, reconstruction, or renovation of existing highways within the State of Arkansas;

(2) Accelerate highway improvement projects already underway or planned;

(3) Fund construction of new highway improvement projects where necessary; and

(4) Pay the costs of issuance of the bonds or other credit enhancements.

(c) The authority of the commission to issue bonds under this subchapter shall begin on April 1, 2019, and shall expire on March 31, 2039.

27-64-605. Election.

(a) Bonds shall not be issued under this subchapter unless the

authority of the State Highway Commission to issue the bonds is approved by a majority of the qualified electors of the state voting on the question at the 2018 general election.

(b)(1) Notice of the election shall be:

(A) Published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days before the election; and

(B) Mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days before the election.

(2) The notice of election provided under this subsection shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the following form:

“Authorizing the State Highway Commission to issue 2017 Arkansas Highway Maintenance and Construction Bonds. If approved, the bonds will be issued in several series of various principal amounts from time to time, for the purpose of paying the cost of maintaining, resurfacing, repairing, widening, or reconstructing existing highways within the state and constructing new highways where necessary.

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues, including particularly and without limitation a wholesale sales tax on motor fuel and a wholesale sales tax on special motor fuel tax. The wholesale sales tax on motor fuel and the wholesale sales tax on special motor fuel have already been enacted but will not become effective unless the issuance of bonds is approved by a vote of the people. The bonds are also secured by the full faith and credit of the State of Arkansas, including its general revenues.

“Under the Arkansas Highway Maintenance and Construction Bond Act of 2017 (the “Bond Act”), the bonds will be repaid first from:

(1) Revenues derived from the taxes levied in Arkansas Code §§ 26-64-101 and 26-64-102 that are deposited into the 2017 Highway Maintenance and Construction Bond Account within the State Highway and Transportation Department Fund; and

(2) Other revenues provided by the General Assembly for use in paying the bonds.

To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the payment shall be made from the

general revenues of the State of Arkansas. The bonds shall be issued under the authority of and the terms stated in the Bond Act.”

(c) The ballot title shall be “Issuance of 2017 Arkansas Highway Maintenance and Construction Bonds and pledge of the full faith and credit of the State of Arkansas”.

(d) On each ballot there shall be printed the title, the proposition stated in subdivision (b)(2) of this section, and the following:

“FOR authorizing the State Highway Commission to issue 2017 Arkansas Highway Maintenance and Construction Bonds for the improvement of existing highways and construction of new highways where necessary; such bonds to be issued in one (1) or more series of various principal amounts; the debt service on the bonds to be paid with “designated revenues” as defined in the Arkansas Highway Maintenance and Construction Bond Act of 2017; such designated revenues consisting of taxes that have already been enacted by the General Assembly but will not become effective unless the issuance of bonds is approved by a vote of the people; and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds. . . []”

“AGAINST authorizing the State Highway Commission to issue 2017 Arkansas Highway Maintenance and Construction Bonds for the improvement of existing highways and construction of new highways where necessary; such bonds to be issued in one (1) or more series of various principal amounts; the debt service on the bonds to be paid with “designated revenues” as defined in the Arkansas Highway Maintenance and Construction Bond Act of 2017; such designated revenues consisting of taxes that have already been enacted by the General Assembly but will not become effective unless the issuance of bonds is approved by a vote of the people; and the pledge of the full faith and credit of the state of Arkansas to further secure the bonds. . . []”

(e)(1) Each county board of election commissioners shall hold and conduct the election required under this section and may take any action with respect to the appointment of election officials and other matters as required by the laws of the state.

(2)(A) The vote shall be canvassed and the result of the vote declared in each county by the board.

(B) Within ten (10) days after the date of the election, the results shall be certified by the county boards of election commissioners to the Secretary of State, who shall tabulate all returns received and

certify to the Governor the total vote for and against the proposition submitted under this section.

(f)(1) The result of the election held under this section shall be proclaimed by the Governor by the publication of the proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint is filed challenging the results in Pulaski County Circuit Court within thirty (30) days after the date of the publication under subdivision (f)(1) of this section.

(g) If a majority of the qualified electors voting on the proposition submitted under this section vote:

(1) In favor of the proposition, the commission may issue bonds in the manner and on the terms stated in this subchapter; or

(2) Against the proposition, the commission shall not issue bonds.

27-64-606. Procedure for issuing bonds.

(a) Before any series of bonds are issued under this subchapter, the State Highway Commission shall adopt a resolution authorizing the issuance of the series of bonds.

(b) Each resolution adopted under this section shall contain the terms, covenants, and conditions that are desirable and consistent with this subchapter, including without limitation terms pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of bond proceeds, and the rights and obligations of the state, officers and officials of the state, the commission, and the registered owners of the bonds.

(c)(1) A resolution of the commission under this section may provide for the execution and delivery by the commission of a trust indenture or trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions required under subsection (b) of this section and any other terms and conditions deemed necessary by the commission.

(2) The trust indenture or trust indentures are binding upon the commission, the state, and the officers and officials of the commission and the state.

27-64-607. Terms of bonds.

The bonds are subject to the following terms and conditions:

(1)(A) The bonds shall be issued in series in amounts sufficient to finance all or part of the costs of highway improvements.

(B) The respective series of bonds shall be designated by the year in which the bonds are issued.

(C) If more than one (1) series of bonds is to be issued in a particular year, the series shall be designated alphabetically;

(2)(A) The bonds of each series shall have the date or dates determined by the State Highway Commission.

(B) The bonds shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series.

(C) Refunding bonds issued under § 26-64-612 shall mature or be subject to mandatory sinking fund redemption over a period not ending later than twelve (12) years after the date of issue of the original bonds of each series;

(3)(A) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds.

(B) The bonds may bear interest at either a fixed or a variable rate or may be convertible from one (1) interest rate mode to another.

(C) The interest shall be payable at the times determined by the commission;

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons;

(5) The commission shall determine:

(A) The denominations of the bonds;

(B) Whether the bonds may be made exchangeable for other bonds of another form or denomination bearing the same rate of interest;

(C) When the bonds may be made payable and the places within or without the state where the bonds may be payable;

(D) Whether the bonds may be made subject to redemption before maturity and the manner of and prices for redemption; and

(E) Any other terms and conditions; and

(6)(A) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission, and the seal of the commission shall be affixed or imprinted on the bond.

(B) Delivery of executed bonds shall be valid notwithstanding any change in the persons holding the offices stated in subdivision (6)(A) of this section that occurs after the bonds have been executed.

27-64-608. Sale of bonds.

(a)(1) The bonds may be sold in any manner, either at private or public sale, and upon any terms determined by the State Highway Commission to be reasonable and expedient for effecting the purposes of this subchapter.

(2)(A) The bonds may be sold at a price acceptable to the commission.

(B) The price for which the bonds are sold may include a discount or premium.

(b)(1) If the bonds are to be sold at public sale, the commission shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that the offering is being made.

(2) The commission shall set the terms and conditions of bidding, including without limitation the basis on which the winning bid will be selected.

(c) The commission may structure the sale of bonds utilizing financing techniques that are recommended by the commission's professional advisors in order to take advantage of market conditions and to obtain the most favorable interest rates consistent with the purposes of this subchapter.

(d) The commission may enter into any ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable, including without limitation bond purchase agreements, remarketing agreements, and letter of credit reimbursement agreements.

27-64-609. Employment of professionals.

The State Highway Commission may retain any professionals necessary to accomplish the issuance and sale of bonds under this subchapter, including

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

27-64-610. Sources of repayment.

(a) The bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues and the general revenues of the state.

(b) The bonds shall be payable first from designated revenues.

(c) If the amount of designated revenues is insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas.

27-64-611. Investment of proceeds.

(a) Designated revenues and proceeds of the bonds held pending disbursement on highway improvements shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended.

(b) Notwithstanding any other provision of law, investments by the commission under this section shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the designated revenues or bond proceeds appertain to the extent that the terms of the resolution or trust indenture are applicable.

27-64-612. Refunding bonds.

(a) The State Highway Commission may issue bonds for the purpose of refunding bonds previously issued under this subchapter.

(b) The refunding bonds shall be general obligations of the State of Arkansas and shall be secured and sold in accordance with this subchapter.

27-64-613. Tax exemption – Security.

(a) All bonds issued under this subchapter and interest on the bonds are exempt from all taxes of the State of Arkansas, including without limitation income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

27-64-614. Powers of the State Highway Commission.

(a) All powers granted to the State Highway Commission under this subchapter are in addition to the powers of the commission under Arkansas Constitution, Amendment 42, and the laws of the State of Arkansas.

(b) A member of the commission shall not be liable personally for any reason arising from the issuance of bonds under this subchapter unless the member acts with corrupt intent.

/s/D. Douglas