

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 445

By: Senators M. Johnson, J. Boyd, J. Bryant, Caldwell, A. Clark, J. Dotson, J. English, Flippo, K. Hammer, Hester, B. Johnson, M. McKee, J. Payton, J. Petty, Rice, Stone, G. Stubblefield, D. Wallace
By: Representatives M. Brown, Brooks, B. McKenzie, Ray

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.

(a) The General Assembly finds:

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Arkansas Constitution, Article 5, § 1, provides that "[n]o measure approved by a vote of the people shall be amended or repealed by the General Assembly.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



(2) Arkansas Constitution, Article 5, § 1, defines "measure" to include any bill, law, resolution, ordinance, charter, constitutional amendment or legislative proposal or enactment of any character;

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

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

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

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

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

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

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

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

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

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

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

§ 1. Intent.

The people of the State of Arkansas find that:

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

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

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

§ 2. Definitions.

As used in this amendment:

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

(b) "Chairman" means the chair of the Arkansas Highway Commission;

(c) "Chief fiscal officer" means the Director of the Department of Finance and Administration;

(d) "Commission" means the State Highway Commission;

(e) "Debt service" means all amounts required for the payment of

principal of, interest on, and premium, if any, due with respect to the bonds in any fiscal year, along with all associated costs, including without limitation the fees and costs of paying agents and trustees, and remarketing agent fees;

(f) "Designated tax revenues" means:

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

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

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

(A) ~~Four-lane~~ Multilane roadways;

(B) Bridges;

(C) Tunnels;

(D) Engineering;

(E) Rights-of-way; and

(F) Other related capital improvements and facilities appurtenant or pertaining thereto, including costs of rights-of-way acquisition and utility adjustments.

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

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

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

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

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

- (3) Providing matching funds in connection with federal highway programs for ~~four-lane~~ multilane highway improvements; and
- (4) Paying the costs of issuance of the bonds.

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

§ 5. Use of proceeds.

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

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

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

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

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

§ 7. Effective Date - Use of funds.

(a) The taxes levied by this amendment shall not become effective until after a majority of the qualified electors of the state voting on the question approve the issuance of ~~Four-Lane~~ Multilane Highway Construction and Improvement General Obligation Bonds to be repaid in part by the taxes levied

by this amendment and deposited to the Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund.

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

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

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

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

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

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

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

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

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

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

SECTION 8. Pursuant to the authority granted by Arkansas Constitution,

Article 5, § 1, Arkansas Constitution, Amendment 91, § 15(a)(2), concerning the general obligation status of bonds issued under Arkansas Constitution, Amendment 91, is amended to read as follows:

(2) The bonds shall be payable from:

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

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

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

§ 16. Sources of repayment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Moneys held in the Arkansas ~~Four-Lane~~ Multilane Highway Construction and Improvement Bond Account in the State Highway and

Transportation Department Fund and any fund in the State Treasury created under this amendment shall be invested by the State Board of Finance to the full extent practicable pending disbursement for the purposes intended.

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

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

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

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

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

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

~~“AGAINST a proposed constitutional amendment to levy a temporary sales and use tax of one-half percent (0.5%) for state highways and bridges, county roads, bridges and other surface transportation, and city streets, bridges and other surface transportation, with the state’s portion to secure State of Arkansas General Obligation Four-Lane Highway Construction and Improvement~~

~~Bonds in the total principal amount not to exceed \$1,300,000,000 for the purpose of constructing and improving four-lane highways in the State of Arkansas, prescribing the terms and conditions for the issuance of such bonds which will mature and be paid in full in approximately ten (10) years, which payment in full shall terminate the temporary sales and use tax, describing the sources of repayment of the bonds and permanently dedicating one cent (1¢) per gallon of the proceeds derived from the existing motor fuel and distillate fuel taxes to the State Aid Street Fund.”~~

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

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

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

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

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

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