

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 2037

By: Representative John Miller

"AN ACT TO AMEND ACT 505 OF 1985 [ARK. STATS. §13-2924 ET SEQ.] TO PERMIT THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO GUARANTEE THE PAYMENT OF REVENUE BONDS ISSUED BY CITIES, COUNTIES AND POLITICAL SUBDIVISIONS OF THE STATE; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 3 of Act 505 of 1985, the same being Arkansas Statutes §13-2926, is hereby amended to read as follows:

"Section 3. As used herein, unless the context otherwise requires,

(A) 'Act' shall mean the Arkansas Development Finance Authority Bond Guaranty Act of 1985.

(B) 'ADFA Act' shall mean the Arkansas Development Finance Authority Act, as amended.

(C) 'Amortization payments' shall mean the periodic (monthly, semi-annual, annual, etc.) payments of interest on, premium, if any, and installments of principal of Qualified Bonds as required by the trust indenture relating to such bonds.

(D) 'Authority' shall mean the Arkansas Development Finance Authority.

(E) 'Board' shall mean the Board of Directors of the Authority.

(F) 'Bond Fund' shall mean the Guaranty Bond Fund hereinafter authorized from which bonds issued by the Authority for the purpose of meeting the obligations of the Bond Guaranty Reserve Account are payable.

(G) 'Developer' shall mean the individual, firm or corporation, whether for profit or non-profit, charged with developing the project under the terms of the trust indenture relating to Qualified Bonds.

(H) 'Guaranty Reserve Account' shall mean the Bond Guaranty Reserve Account created hereunder for the purpose of meeting amortization payments of

Qualified Bonds guaranteed by the Authority and for the purpose of enhancing and supporting the credit of such Qualified Bonds.

(I) 'Project' shall mean the project for which the proceeds of Qualified Bonds are utilized.

(J) 'Qualified Bonds' shall mean revenue bonds validly issued by (1) the Authority in accordance with the provisions of the ADFA Act or (2) any city, county or other political subdivision of the State.

(K) 'State' shall mean the State of Arkansas."

SECTION 2. Section 4 of Act 505 of 1985, the same being Arkansas Statutes §13-2927, is hereby amended to read as follows:

"Section 4. The Authority, in addition to all the duties and functions defined in the ADFA Act, is hereby empowered to approve or deny by majority vote if its Board the guaranty as provided herein of amortization payments on Qualified Bonds, subject to the provisions, restrictions and conditions set forth in this Act."

SECTION 3. Section 5 of Act 505 of 1985, the same being Arkansas Statutes §13-2928, is hereby amended to read as follows:

"Section 5. (a) Amortization payments on Qualified Bonds may be guaranteed in instances when:

(a) The Authority deems the utilization of the guaranty in the best interest of the economic development of the State of Arkansas;

(b) The total amount of Qualified Bonds guaranteed at any time under this Act will be the lesser of (1) seventy-five million dollars (\$75,000,000), (2) an amount equal to ten (10) times the amount on deposit at such time in the Guaranty Reserve Account, or (3) the amount of ADFA guaranteed bonds for which the Guaranty Reserve Account is sufficient to pay debt service requirements of all ADFA guaranteed bonds currently outstanding and payable in the current calendar year;

(c) The Developer of the Project involved is not permitted to purchase or own at any time any of such bonds;

(d) The Developer is found to be financially responsible, and that sufficient income may reasonably be expected to amortize in an orderly manner amortization payments of the Qualified Bonds; and

(e) A financial institution participates in the financing necessary to

accomplish the Project, provided, the Authority may waive this requirement in the exercise of its sound discretion, upon a sufficient showing by the Developer that such participation cannot be obtained, or is not feasible because of justifiable circumstances, and the Project involved otherwise meets the other conditions of this Section 5.

The Authority shall promulgate standards and regulations for the evaluation of the financial condition and business history of Developers, and may require the attachment to each application for guaranty under this Act of a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as the Authority may make, in determining whether the Developer meets prescribed minimum standards and qualifications before entering into any guaranty under this Act."

SECTION 4. Subsection (a) of Section 7 of Act 505 of 1985, the same being Arkansas Statutes §13-2930(a), is hereby amended to read as follows:

"(a) Each Developer requesting a guaranty hereunder shall submit to the Authority supporting documents, instruments, contractor's costs or estimated cost of improvements, land costs, and other evidence showing conformity with the ADFA Act or other law pursuant to which Qualified Bonds are to be or have been issued, and a premium payment to the Bond Guaranty Reserve Account in an amount equal to either (i) three percent (3%) of the amount of the total principal and interest requirements from date of issuance to maturity of the Qualified Bonds guaranteed or (ii) five percent (5%) of the principal amount of the Qualified Bonds guaranteed, whichever is the larger amount."

SECTION 5. Section 9 of Act 505 of 1985, the same being Arkansas Statutes §13-2932, is hereby amended to read as follows:

"Section 9. Guaranty agreements entered into by the Authority under the provisions of this Act with respect to Qualified Bonds issued on behalf of any Developer shall provide, among other things:

(a) That the Authority guarantees, and said Authority is hereby required, to use the funds on deposit in the Bond Guaranty Reserve Account to meet amortization payments as guaranteed under this Act as the same become due, in the event, and to the extent, the Developer is unable to meet such payments in accordance with the terms of the bond indenture when called on to do so by the trustee of the bondholders. Whenever the Authority acting under the terms of

the guaranty agreement deems it necessary to assume the obligation of maintenance of any project, the amortization payments of which the Authority has guaranteed under the provisions of this Act, the Authority may use funds on deposit in the Bond Guaranty Reserve Account to pay insurance and maintenance costs required for the preparation of the same and to protect such Reserve Account from loss, or to minimize losses, in such manner as deemed necessary and advisable by the Authority.

(b) That the guaranty shall not be a general obligation of the Authority or of the State of Arkansas, but shall be a special obligation, and in no event shall the guaranty constitute an indebtedness of the Authority or of the State of Arkansas within the meaning of any constitutional or statutory limitation. Each guaranty agreement shall have plainly stated on the face thereof that the same has been entered into under the provisions of this Act, and that it does not constitute an indebtedness of the Authority or of the State of Arkansas within any constitutional or statutory limitation, and that the full faith and credit of the State of Arkansas or any of its revenues are not pledged to meet any of the obligations of the Authority under such guaranty agreement. Each such agreement shall state that the obligation of the Authority under the guaranty shall be limited to the funds available in the Bond Guaranty Reserve Account as authorized in this Act."

SECTION 6. It is the intention of this Act to amend such sections of Act 505 of 1985 as are specifically mentioned herein; the remainder of said Act 505 shall remain in full force and effect as enacted until the same shall be further amended or repealed.

SECTION 7. Each amendment of a section of Act 505 of 1985 made by this Act shall also be an amendment of the corresponding section of Act 340 of 1985.

SECTION 8. EMERGENCY. It is hereby found and determined by the General Assembly that the present limitations on bond guaranties under the Arkansas Development Finance Authority Bond Guaranty Act of 1985 unnecessarily preclude the Arkansas Development Finance Authority from rendering assistance through its bond guaranty program to developers whose projects are financed through revenue bonds issued by cities, counties and political subdivisions of the

State, thereby preventing the Authority from using the bond guaranty program to its fullest potential to promote economic development. It is further found that such limitations can be relaxed without jeopardizing the financial stability of the Authority's bond guaranty program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

