

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Malone

SENATE BILL 409

"AN ACT AUTHORIZING THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION TO ISSUE WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES GENERAL OBLIGATION BONDS IN TOTAL PRINCIPAL AMOUNT NOT TO EXCEED \$250,000,000 IN SERIES FROM TIME TO TIME IN PRINCIPAL AMOUNTS NOT TO EXCEED, WITHOUT PRIOR APPROVAL OF THE GENERAL ASSEMBLY, \$50,000,000 IN ANY FISCAL BIENNIUM FOR THE PURPOSE OF FINANCING WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES TO SERVE THE INHABITANTS OF THE STATE OF ARKANSAS; SUBMITTING THE QUESTION OF THE ISSUANCE OF BONDS AT THE 1988 GENERAL ELECTION; PRESCRIBING OTHER MATTERS RELATING THERETO; AND FOR OTHER PURPOSES."

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

SECTION 1. This Act may be referred to and cited as the "Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987".

SECTION 2. (a) The Arkansas Soil and Water Conservation Commission is hereby authorized to issue bonds of the State of Arkansas, to be known as State of Arkansas Waste Disposal and Pollution Abatement Facilities General Obligation Bonds (the "Bonds"), in total principal amount not to exceed Two Hundred Fifty Million Dollars (\$250,000,000), for the purposes set forth herein. The Bonds may be issued in one or more series as required subject to the conditions and in compliance with the procedures set forth herein.

(b) The total principal amount of Bonds to be issued during any fiscal biennium shall not exceed Fifty Million Dollars (\$50,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium. Provided further that, before any Bonds may be issued during any fiscal biennium, the Arkansas Soil and

Water Conservation Commission shall submit to the Governor a written plan for the work or project(s) to be financed with the proceeds derived from the sale of such Bonds, the need for, and the estimated benefits thereof. Upon receipt thereof, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the "general revenues", as such term is defined in the Revenue Stabilization Law of Arkansas, for payment of debt service requirements in connection with the Bonds during either year of the fiscal biennium in which the Bonds are to be issued, would require monies from the "general revenues for allocation" that would work undue hardship upon any agency or program supported from general revenues under the provisions of the Revenue Stabilization Law.

(c) Upon conclusion of such studies, and after obtaining the advice of the Legislative Council thereon, the Governor shall, if he deems the same to be in the public interest, by proclamation, authorize the Commission to proceed with the issuance of the Bonds as provided herein.

(d) If the Governor shall decline or refuse to give his approval for the issuance of such Bonds, and shall decline to issue a proclamation approving the issuance thereof, the Governor shall promptly notify the Commission, in writing, and the Commission shall not issue such Bonds, but it may thereafter, but not sooner than one (1) year from the date of the earlier submission, resubmit a request to the Governor for the issuance thereof. The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the Bonds.

SECTION 3. In this Act, unless the context otherwise requires,

(1) "Commission" means the Arkansas Soil and Water Conservation Commission, and any successor agency or department;

(2) "debt service" means principal, interest, redemption premiums, if any, and trustees' and paying agents' and like servicing fees relative to the Bonds;

(3) "develop" means to construct, acquire (by purchase or, as set forth herein, by eminent domain), own, operate, lease as lessor or lessee, lend, make grants in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal or mixed;

(4) "person" means any individual partnership or corporation, or any county, municipality, conservation district, or school district in the State of Arkansas, or agency thereof, or any agency of the State of Arkansas;

(5) "project" means any lands, buildings, improvements, conservation practices, machinery, equipment, or other property, real, personal or mixed, or any combination thereof, developed in pursuance of all or any of the purposes of this Act;

(6) "project costs" means all or any part of the costs of developing any project hereunder, costs incidental or appropriate thereto and costs incidental or appropriate to the financing thereof (including, without limitation, capitalized interest and appropriate reserves and fees and costs for engineering, legal, and other administrative and consultant services);

(7) "waste" means any liquid or solid produced as an undesirable byproduct of any activity;

(8) "pollution abatement" means reduction, control or elimination by appropriate methods of such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, or such discharge of any liquid, gaseous or solid substance in any waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

SECTION 4. (a) The Bonds shall be issued, in series, as set forth herein, in amounts sufficient to finance all or any part of project costs with the respective series to be designated in alphabetical order and/or by the year in which issued.

(b) The Bonds of each series shall have such date as the Commission shall determine and shall mature annually (or be subject to mandatory sinking fund redemption) over a period ending not later than thirty (30) years after the date of the Bonds of each series so as to provide annual debt service of approximately equal amounts (insofar as practicable) throughout the term of the Bonds, as determined by the Commission. Pending the issuance of Bonds hereunder, the Commission may issue temporary notes, maturing not more than five (5) years from the date of issuance, to be exchanged for or paid from the proceeds of Bonds at such time as the Bonds may be issued.

(c) The Bonds of each series shall bear interest at the rate or rates accepted by the Commission at the public sale of the Bonds. Interest shall be payable at such times as the Commission shall determine.

(d) The Bonds may be issued in the form of coupon bonds, payable to bearer, or as bonds registered as to principal only with interest coupons, or as bonds registered as to both principal and interest without coupons; may be in such denominations; and may be made exchangeable for Bonds of another form or denomination, bearing the same rate of interest may be made payable at such places within or without the State; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Commission shall determine.

(e) The Bonds, of each series, shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions regarding registration of ownership set forth above.

SECTION 5. Bonds issued under the Act shall be issued for the purpose of financing and development of waste disposal facilities and/or pollution abatement facilities, and the proceeds of the Bonds shall be applied for the payment of project costs and the costs and expenses of issuance of the Bonds.

SECTION 6. (a) The Bonds shall be authorized by resolution of the Commission. Each such resolution shall contain such terms, covenants, and conditions as are deemed desirable, including without limitation, those pertaining to the establishment and maintenance of funds and accounts, to the deposit and investment of revenues and of Bond proceeds and to the rights and obligations of the State, its officers and officials, the Commission and the holders or registered owners of the Bonds. The resolution of the Commission may provide for the execution and delivery by the Commission of a trust indenture or trust indentures, with a bank or banks located within or without the State, containing any of the terms, covenants, and conditions referred to above, which trust indenture or trust indentures shall be binding upon the State, and its officers and officials, to the extent set forth in this Act.

(b) Any resolution or trust indenture adopted or executed under this Section 6 shall provide that power is reserved to apply to the payment of debt service on the Bonds issued or secured thereunder all or any part of the revenues derived from any project financed by such Bonds, and, to the extent of

such revenues, to release from any requirement of such resolution or trust indenture other revenues and resources of the State, including without limitation, the "general revenues for allocation" required to be transferred under Section 11 hereof.

(c) The Commission shall endeavor to select projects for financing and development under this Act which offer reasonable and realistic prospects of the production of revenues, whether by direct user fees, taxes, or otherwise.

SECTION 7. Each Bond shall be signed with the facsimile signatures of the Governor, the Secretary of State and the Chairman of the Commission and by the manual signature of the Treasurer of State or by one or more deputies of the Treasurer of State, and shall have affixed or imprinted thereon the Great Seal of the State. Interest coupons attached to the bonds, if any, shall be signed with the facsimile signature of the Treasurer of State. Delivery of the Bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the Bonds have been executed.

SECTION 8. Bonds shall be sold at public sale on sealed bids, after notice published by the Chairman of the Commission by at least one (1) insertion not less than twenty (20) days before the date of sale in a newspaper published in the City of Little Rock, Arkansas, and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York, which notice shall contain such other terms and provisions as the Commission determines to be desirable. The Commission shall award the sale of the Bonds to the bidder offering to purchase the Bonds at a price which results in the lowest net interest cost to the State of Arkansas (determined by computing the total interest cost from date to maturity, and deducting therefrom any premium bid and adding thereto the amount of any discount bid); provided, however, that the Commission shall reserve the right to reject all bids tendered at such public sale. The Commission may employ administrative agents, fiscal agents, and legal counsel and may pay them reasonable compensation from the proceeds of the Bonds. The costs of publication of notices and of printing of the Bonds, official statements and other documents relating to the sale of the Bonds shall be paid from the proceeds of the Bonds.

SECTION 9. The proceeds from the sale of the Bonds, together with all

revenues derived by the Commission from any project financed under this Act, shall be deposited by the Commission, as received, into trust funds in the State Treasury, to accomplish the purposes of this Act, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the Bonds issued to finance the development of project, into trust funds created hereby and designated as follows:

(a) into the Waste Disposal and Pollution Abatement Facilities Construction Fund (the "Construction Fund"), to provide for the development of projects and the payment of the costs and expenses of the issuance of the Bonds;

(b) into the Waste Disposal and Pollution Abatement Facilities Bond Fund (the "Bond Fund"), to provide for payment for all or a part of debt service on Bonds issued under this Act;

(c) into the Waste Disposal and Pollution Abatement Facilities Debt Service Reserve Fund (the "Debt Service Reserve Fund"), to provide for a reserve or reserves for payment of debt service on the Bonds;

(d) into the Waste Disposal and Pollution Abatement Facilities Operation and Maintenance Fund (the "Operation and Maintenance Fund"), to provide for all or a part of the operation and maintenance of the projects financed under this Act.

The Treasurer of State is authorized and directed to establish separate accounts within such Funds to correspond to the applicable series of Bonds. In addition, there may be created in the State Treasury such other Funds, accounts, or subaccounts as the Commission may determine in said resolution or trust indenture to be necessary to accomplish the purposes of this Act.

SECTION 10. The Bonds shall be the direct general obligations of the State of Arkansas, for the payment of debt service on which the full faith and credit of the State of Arkansas are hereby irrevocably pledged so long as any such Bonds are outstanding. The Bonds shall be payable from the "general revenues" of the State as such term is defined in the Revenue Stabilization Law of Arkansas, and such amount of "general revenues" as is necessary is hereby pledged to the payment of debt service on the Bonds, and shall be and remain pledged for such purposes.

SECTION 11. On or before commencement of each fiscal year, the Chief

Fiscal Officer of the State shall determine the estimated amount required for payment for all or a part of debt service on the Bonds issued under this Act during such fiscal year, after making deductions therefrom of estimated monies to be available to the Commission from other sources therefor, and shall certify such estimated amount to the Treasurer of State. The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the Bond Fund, of such amount of "general revenues for allocation", as such term is defined in the Revenue Stabilization Law of Arkansas, as shall be required to pay the maturing debt service on Bonds issued under this Act.

The Treasurer of State shall make such additional monthly transfer or transfers of "general revenues for allocation" as the Chief Fiscal Officer of the State shall certify to him as being required to enable the Commission to establish and thereafter maintain the Debt Service Reserve Fund, to provide a reserve or reserves for payment of debt service on the Bonds. The obligation to make monthly transfers of "general revenues for allocation" from the State Apportionment Fund to the Bond Fund and to the Debt Service Reserve Fund shall constitute a first charge against said "general revenues for allocation" prior to all other uses to which said "general revenues for allocation" are devoted, either under present law or under any laws that may be enacted in the future; provided, however, that to the extent other general obligation bonds of the State may subsequently be issued, all such general obligation bonds shall rank on a parity of security with respect to payment from "general revenues for allocation".

Monies credited to the Bond Fund and the Debt Service Reserve Fund shall be used only for the purpose of paying debt service on the Bonds, either at maturity or upon redemption prior to maturity, and for such purposes the Treasurer of State is hereby designated Disbursing Officer to administer such funds in accordance with the provisions of this Act.

The Debt Service Reserve Fund shall be held and used to insure prompt payment of debt service on the Bonds in such manner and pursuant to such conditions as may be specified by the Commission in the resolution or trust indenture authorizing or securing such Bonds.

Monies in the Bond Fund and the Debt Service Reserve Fund over and above the amount necessary to insure the prompt payment of debt service on the Bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity in the manner and in accor-

dance with the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the Bonds.

SECTION 12. All bonds issued under this Act, and interest thereon, shall be exempt from all taxes of the State of Arkansas, including income, inheritance and property taxes. 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.

SECTION 13. The Commission, in addition to powers conferred under other laws, shall have the power under this Act:

(a) to provide loans from Bond proceeds to cities, counties, improvement districts, conservation districts, or other political subdivisions, or agencies and instrumentalities of the State for payment of project costs;

(b) to construct or cause to be constructed with proceeds of loans or grants by the Commission, lease as lessee, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, mortgage, or lend with respect to all or any part of any project;

(c) to acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner to dispose of franchises, rights, privileges, licenses, rights-of-way and easements necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in this Act;

(d) to sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of any project or other properties, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way and easements;

(e) to have and exercise the right of eminent domain for the purpose of acquiring lands (the fee title thereto or any easement, right-of-way or other interest or estate therein) for projects or portions thereof, by the procedure now provided for condemnation by railroads by Act No. 123 of 1873, as amended;

(f) to make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements or other property, real or personal or mixed;

(g) to make any and all contracts necessary or convenient for the exercise of the powers or implementation of the purposes set forth in this Act;

(h) to fix, regulate and collect rates, fees, rents or other charges for the use of any properties or services furnished by the Commission;

(i) to require audits of any or all accounts related to construction, operation, or maintenance of any project funded by this Act;

(j) to take reasonable actions necessary to insure that Debt Service Requirements are met; and

(k) to take such other action as may be appropriate to accomplish the purposes of this Act.

SECTION 14. This Act shall constitute a contract between the State of Arkansas and the holders or registered owners of all Bonds issued hereunder which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer. The courts shall, in like suit against the Commission, the Treasurer of State, other appropriate officer or official of the State, prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues, by injunction or mandamus. Also, and without limitation as to any other appropriate remedy at law or in equity, any bondholder may, by an appropriate action, including without limitation, injunction or mandamus, compel the performance of all covenants and obligations of the State, its officers and officials, hereunder.

SECTION 15. This Act shall not create any right of any character and no right of any character shall arise under or pursuant to it, unless and until the first series of Bonds authorized by this Act shall have been sold and delivered.

SECTION 16. No Bonds shall be issued under this Act except by and with the consent of a majority of the qualified electors of the State voting on the question at the general election of 1988 unless the Governor shall, by proclamation, call a special election to be conducted prior thereto. If the question is presented at the general election of 1988, notice thereof shall be published by the Secretary of State in a newspaper of general circulation in the State at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

If a special election is called by the Governor, the proclamation thereof shall be made at least sixty (60) days prior to the date fixed by such proclamation for the election, and notice of the special election shall be given by publication of the proclamation for one insertion in one newspaper of general circulation published in each county in the State not less than thirty (30) days prior to the date of such election. If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county. It shall not be necessary, in the case of the notice or proclamation for the election, to publish this Act in its entirety, but the notice or proclamation shall state that it is issued for the purpose of submitting to the people substantially the following question:

Shall the Arkansas Soil and Water Conservation Commission be authorized to issue State Waste Disposal and Pollution Abatement Facilities General Obligation Bonds under the authority of the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987 in total principal amount not to exceed Two Hundred Fifty Million Dollars (\$250,000,000), in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, Fifty Million Dollars (\$50,000,000) in any fiscal biennium, which Bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?

Whether the question is presented at special election or at the general election of 1988, the title of this Act shall be the ballot title, and there shall be printed on the ballot the proposition as stated above, and the following:

FOR Issuance of Arkansas Waste Disposal and
 Pollution Abatement Facilities General Obligation _____
 Bonds....._____

AGAINST Issuance of Arkansas Waste Disposal
 and Pollution Abatement Facilities General Obligation _____
 Bonds....._____.

The county boards of election commissioners of the several counties of this State shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as the law requires; and the vote

shall be canvassed and the result thereof declared in each county by such several county boards. The results shall within ten (10) days after the date of the election be certified by such county boards to the Secretary of State who shall forthwith tabulate all returns so received by him and certify to the Governor the total vote for and against the proposition submitted as in this Section provided.

The result of the election shall be proclaimed by the Governor by publication one time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of such publication.

SECTION 17. If a majority of the qualified electors voting on the question shall vote for the issuance of the Bonds, the Commission shall proceed with the sale and the issuance of the Bonds as provided in this Act. If a majority of the qualified electors voting on the question vote against the issuance of the Bonds, none of the Bonds authorized by this Act shall ever be sold or issued, and all provisions of this Act shall be of no further effect.

SECTION 18. Any moneys held in any fund created under this Act shall be invested by the State Board of Finance to the full extent practicable pending disbursement for the purposes intended. Notwithstanding any other provision of law, such investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of Bonds to which said fund appertains to the extent of the terms of such resolution or trust indenture are applicable.

SECTION 19. If, for any reason any Section or provision of this Act shall be held to be unconstitutional or invalid for any reason, such holding shall not affect the remainder of this Act, but this Act, insofar as it is not in conflict with the Constitution of this State or the Constitution of the United States, shall be permitted to stand, and the various provisions of this Act are hereby declared to be severable for that purpose. Any case involving the validity of this Act or involving the Bonds issued hereunder, shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such

cases must be taken within thirty (30) days after rendition of such judgment or decree.

SECTION 20. (a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act.

SECTION 21. EMERGENCY. It has been found and it is hereby declared by the General Assembly that there is an immediate need for the development of waste disposal facilities to provide for the safe, sanitary disposal of both liquid and solid wastes produced by municipalities, individuals, industries, or agriculture and for the development of pollution abatement facilities to reduce pollution of the State's water resources. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval.

