

Opinion No. 2012-057

April 24, 2012

The Honorable Mark Martin  
Secretary of State  
State Capitol, Room 256  
Little Rock, AR 72201-1094

Dear Mr. Martin:

This is in response to your request, pursuant to A.C.A. § 7-9-110 (Repl. 2011), for my preparation of the popular name for a resolution of the General Assembly passed at the 2011 regular session.<sup>1</sup> This resolution, Senate Joint Resolution 5 (Issue No. 2), proposes a new constitutional amendment that will be referred directly to the electorate by the 88<sup>th</sup> General Assembly. This measure will appear on the state's November 6, 2012, general election ballot.

The popular name for this proposed amendment is hereby fixed and declared as follows in order to distinguish and identify the measure, *see generally Becker v. Riviere*, 277 Ark. 252, 641 S.W.2d 2 (1982) and *Walmsley v. McCuen*, 318 Ark. 269, 885 S.W.2d 10 (1994):

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<sup>1</sup> Subsection 7-9-110(a) requires me to “fix and declare the popular name by which each amendment to the Constitution . . . shall be designated.” This mandate includes not only constitutional amendments proposed by the people under Arkansas Constitution, Amendment 7, *see* A.C.A. § 7-9-107 (Repl. 2011), but also constitutional amendments submitted to the people by the General Assembly under Arkansas Constitution, article 19, section 22. *See* A.C.A. § 7-9-101(2) (Repl. 2011) (defining “amendment” to include amendments proposed by the General Assembly). I have no statutory authority, however, with respect to any ballot titles for the latter measures. *See* Op. Att’y Gen. 96-096.

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Issue No. 2

**(Popular Name)**

AN AMENDMENT CONCERNING MUNICIPAL AND COUNTY  
FINANCING OF SALES TAX ANTICIPATED REVENUE BOND  
PROJECTS, UNFUNDED LIABILITIES OF CLOSED LOCAL  
POLICE AND FIRE PENSION PLANS, AND REAL AND  
TANGIBLE PERSONAL PROPERTY

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM/cyh

Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

1 State of Arkansas *As Engrossed: S3/9/11 S3/14/11 S3/16/11 S3/24/11 S3/29/11*

2 88th General Assembly

3 Regular Session, 2011

SJR 5

4

5 By: Senator Files

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## SENATE JOINT RESOLUTION

8

PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION

9

CONCERNING FINANCIAL REFORM FOR COUNTIES AND

10

MUNICIPALITIES; PROPOSING AN AMENDMENT TO THE

11

ARKANSAS CONSTITUTION TO AUTHORIZE CITIES AND

12

COUNTIES TO CREATE DISTRICTS WITHIN THE CITY OR

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COUNTY FOR DEVELOPMENT AND REDEVELOPMENT PROJECTS

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WITHIN THE DISTRICT AND TO ISSUE BONDS PAYABLE FROM

15

THE INCREASED AMOUNT OF *CITY AND COUNTY* SALES AND USE

16

TAX COLLECTED WITHIN THE DISTRICT FOR FINANCING SUCH

17

PROJECTS; PROPOSING AN AMENDMENT TO THE ARKANSAS

18

CONSTITUTION TO AUTHORIZE A MUNICIPALITY OR COUNTY TO

19

ISSUE BONDS AND LEVY A *LOCAL SALES* AND USE TAX FOR

20

THE PURPOSE OF RETIRING UNFUNDED LIABILITIES OF

21

CLOSED LOCAL POLICE AND FIRE PENSION PLANS; AND

22

AMENDING AMENDMENT 78 OF THE ARKANSAS CONSTITUTION TO

23

PROVIDE THAT ANNUAL PRINCIPAL AND INTEREST PAYMENTS

24

ON SHORT-TERM FINANCING OBLIGATIONS SHALL BE CHARGED

25

AGAINST AND PAID FROM GENERAL REVENUES FOR THE FISCAL

26

YEAR AND SPECIAL REVENUES AUTHORIZED TO BE USED FOR

27

THE PROPERTY FINANCED.

28

29

### Subtitle

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*PROPOSING AN AMENDMENT TO THE ARKANSAS*

31

*CONSTITUTION CONCERNING FINANCIAL REFORM*

32

*FOR COUNTIES AND MUNICIPALITIES.*

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*BE IT RESOLVED BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE*



1 STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL  
2 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

3  
4 THAT the following is proposed as an amendment to the Constitution of  
5 the State of Arkansas, and upon being submitted to the electors of the state  
6 for approval or rejection at the next general election for Representatives  
7 and Senators, if a majority of the electors voting thereon at the election  
8 adopt the amendment, the amendment shall become a part of the Constitution of  
9 the State of Arkansas, to wit:

10  
11 SECTION 1. The Arkansas Constitution is amended to read as follows:

12 Sales Tax Anticipated Revenue Bonds.

13 (a) A city or county may form one (1) or more districts for the  
14 purpose of financing sales tax anticipated revenue bond projects within the  
15 district as provided by this section.

16 (b)(1) A city or county which has formed a district under this section  
17 may issue bonds for the purpose of financing certain costs related to a sales  
18 tax anticipated revenue bond project within the district, as determined by  
19 the General Assembly.

20 (2) The bonds may be secured by and be payable from all or a  
21 portion of the division of city and county sales and use taxes collected  
22 within the district under subsection (e) of this section.

23 (3) The bonds shall not be:

24 (A) Considered in calculating debt limits for bonds issued  
25 pursuant to Article XII, § 4, of the Arkansas Constitution; or

26 (B) Subject to the provisions of Article XVI, § 1, of the  
27 Arkansas Constitution or Amendments 62 or 65 to the Arkansas Constitution.

28 (c) For purposes of this section, the term "sales tax anticipated  
29 revenue bond project" means an undertaking, including without limitation the  
30 acquisition, development, redevelopment, and revitalization of land within  
31 the district, for eliminating or preventing the development or spread of  
32 slums or blighted, deteriorated, or deteriorating areas, for discouraging the  
33 loss of commerce, industry, or employment, for increasing employment, or any  
34 combination thereof, as may be defined by the General Assembly.

35 (d) Prior to a city or county's issuance of bonds for a sales tax  
36 anticipated revenue bond project under subsection (b) of this section, the

1 sales tax anticipated revenue bond project shall be approved by an  
2 appropriate state agency as may be determined by the General Assembly.

3 (e) The General Assembly may provide that all or a portion of the city  
4 and county sales and use tax collected within a district may be divided so  
5 that all or part of the increase in city and county sales and use tax  
6 collected by taxpayers within the district after the date on which the  
7 project plan has been approved by an appropriate state agency shall be used  
8 to pay any indebtedness incurred for the sales tax anticipated revenue bond  
9 project.

10 (f) Any provision of the Constitution of the State of Arkansas in  
11 conflict with this section is repealed insofar as it is in conflict with this  
12 section.

13 (g) The General Assembly shall provide for the implementation of this  
14 section by law.

15  
16 SECTION 2. (a) As used in Section 2 of this amendment:

17 (1) "Bonds" means all bonds, notes, certificates, or other  
18 interest-bearing instruments or evidences of indebtedness;

19 (2) "Closed local police and fire pension plan" means a police  
20 officer's pension and relief fund or a firefighter's pension and relief fund  
21 that:

22 (A) Was created by a municipality or county of the state;

23 (B) Does not cover police officers or firefighters first  
24 hired by the employer on or after January 1, 1983; and

25 (C) Was consolidated with the Arkansas Local Police and  
26 Fire Retirement System or its successor; and

27 (3) "Unfunded liability" means the amount by which the actuarial  
28 accrued liability exceeds the actuarial value of assets.

29 (b)(1)(A) With the consent of a majority of the qualified electors  
30 voting on the question at a special election called for that purpose or at a  
31 general election, the legislative body of a municipality or county may  
32 authorize the issuance of bonds for retiring the municipality's or county's  
33 unfunded liabilities for a closed local police and fire pension plan in an  
34 amount approved by a majority of those voting on the question either at a  
35 special election called for that purpose or at a general election.

36 (B) The General Assembly shall prescribe a uniform method

1 of calling and holding the election and the terms upon which the bonds may be  
2 issued.

3 (C) The election shall be held no earlier than thirty (30)  
4 days after it is called by the legislative body.

5 (2)(A) With the consent of a majority of the qualified electors  
6 voting on the question at an election called for that purpose, the  
7 legislative body of a municipality or county may authorize the levy of a  
8 local sales and use tax to pay the bonded indebtedness authorized in this  
9 section.

10 (B) The maximum rate of any tax to pay bonded indebtedness  
11 as authorized in this section shall be stated on the ballot.

12 (C) The General Assembly or the legislative body may  
13 authorize other taxes to retire the bonds.

14 (3)(A) The limit of the principal amount of bonded indebtedness  
15 of the municipality or county is the total amount of unfunded liability of  
16 the municipality or county for a closed local police and fire pension plan.

17 (B) An election shall not be called to authorize the  
18 issuance of bonds that would exceed the total amount of the unfunded  
19 liability of the municipality or county for the closed local police and fire  
20 pension plan either separately or combined with other bonds issued for the  
21 purpose of retiring the municipality's or county's unfunded liabilities for a  
22 closed local police and fire pension plan.

23 (c) The results of an election called under this section shall be  
24 published in a newspaper of general circulation in the county or  
25 municipality, and any contest of the election or the tabulation of the votes  
26 in the election shall be brought within thirty (30) days after the  
27 publication.

28 (d)(1) Bonds issued under this section shall be issued only for the  
29 repayment of unfunded liability of a closed local police and fire pension  
30 plan.

31 (2) The bonds issued under this section and the tax authorized  
32 by this section shall not be used for any other purpose.

33 (e) The bonds described in subsection (b) of this section may be sold:

34 (1) At a public or private sale;

35 (2) Upon the terms that the municipality or county determines  
36 are reasonable and expedient for effectuating the purpose of retiring the

1 unfunded liability of a closed local police and fire pension plan of the  
2 municipality or county; and

3 (3) At a price the municipality or county determines to be  
4 acceptable, including without limitation sale at a discount.

5 (f)(1)(A) The municipality or county may invest or reinvest the  
6 proceeds from the sale of the bonds.

7 (B) The General Assembly shall prescribe the terms upon  
8 which a municipality or county may invest or reinvest bonds for the purpose  
9 of retiring the unfunded liability of a closed local police and fire pension  
10 plan of the municipality or county.

11 (2)(A) After bonds have been issued under this section, a  
12 municipality or county may issue bonds for the purpose of refunding the  
13 principal of and interest on any outstanding bonds issued under this section.

14 (B)(i) The refunding bonds may be sold or delivered in  
15 exchange for the bonds being refunded.

16 (ii) If sold, the refunding bonds shall be issued,  
17 secured, and sold in accordance with this section.

18 (iii) If delivered in exchange, the municipality or  
19 county may exchange the bonds only for bonds of like amount, rate, interest,  
20 and length of issue.

21 (C) The proceeds derived from the sale of any refunding  
22 bonds shall be used only for the purposes stated in this section.

23 (g) After the electorate has approved the bond issue and before the  
24 issuance of the bonds, the municipality or county may borrow funds on an  
25 interim basis, not to exceed three (3) years, and pledge to the payment of  
26 the bonds the tax approved by the voters.

27 (h)(1) The revenues from the tax levied for payment of bonded  
28 indebtedness authorized in this section constitute a special fund pledged  
29 exclusively as security for the payment of the bonded indebtedness.

30 (2) The tax shall not be extended for any other purpose, and it  
31 shall not be collected for a greater length of time than necessary to retire  
32 the bonded indebtedness.

33 (3) Upon retirement of the bonded indebtedness, any surplus tax  
34 collections that may have accumulated shall be transferred to the general  
35 funds of the municipality or county.

36 (i) The General Assembly shall implement this section by appropriate

1 legislation at the next regular session or fiscal session following the  
2 adoption of this amendment.

3 (j)(1) This section does not affect the taxes and bonds authorized for  
4 other purposes before the adoption of this amendment.

5 (2) Taxes levied before the effective date of this amendment  
6 continue in force until abolished, reduced, or increased as provided by law  
7 for those taxes.

8 (3) All bonds and other evidences of indebtedness authorized  
9 before the effective date of this amendment are governed by the  
10 constitutional provisions and laws in effect at the time of the authorization  
11 of those bonds.

12  
13 SECTION 3. Section 2 of Amendment 78 to the Arkansas Constitution is  
14 amended to read as follows:

15 § 2. [Short-term financing obligations].

16 (a)(1) For the purpose of acquiring, constructing, installing or  
17 renting real property or tangible personal property having an expected useful  
18 life of more than one (1) year, municipalities and counties may incur short-  
19 term financing obligations maturing over a period of, or having a term, not  
20 to exceed five (5) years. ~~Such obligations may bear interest at either:~~

21 ~~(1) a fixed rate throughout the term thereof, including a fixed~~  
22 ~~interest rate which is to be determined by reference to an index or other~~  
23 ~~formula, but not to exceed the maximum lawful rate of interest for fixed rate~~  
24 ~~obligations, or~~

25 ~~(2) a rate which may vary at such times and under such~~  
26 ~~circumstances as the parties may agree, whether or not the interest rate in~~  
27 ~~fact varies, but not to exceed the maximum lawful rate of interest for~~  
28 ~~variable rate obligations. The maximum lawful rate of interest for fixed rate~~  
29 ~~obligations is the formula rate in effect on the date the obligation is~~  
30 ~~incurred, regardless of when such interest is to begin to accrue. The maximum~~  
31 ~~lawful rate of interest for variable rate obligations is the formula rate in~~  
32 ~~effect on the date such interest accrues. The aggregate principal amount of~~  
33 short-term financing obligations incurred by a municipality or a county  
34 pursuant to this section shall not exceed five percent (5%) of the assessed  
35 value of taxable property located within the municipality or two and one half  
36 percent (2.5%) of the assessed value of taxable property located within the

1 county, as determined by the last tax assessment completed before the last  
2 obligation was incurred by the city or county. The ~~total~~ annual principal and  
3 interest payments in each fiscal year on ~~all~~ outstanding obligations of a  
4 municipality or a county pursuant to this section shall be charged against  
5 and paid from the general revenues for such fiscal year, ~~which may include~~  
6 ~~road fund revenues. Tax revenues earmarked for solid waste disposal purposes~~  
7 ~~may be used to pay printing and other costs associated with bonds issued~~  
8 ~~under this amendment for solid waste disposal purposes and special revenues~~  
9 authorized to be used to acquire, construct, install, or rent the property  
10 financed by such obligations.

11 (b) As used here~~t~~,

12 (1) ~~"Short term "~~short-term financing obligation" means a debt,  
13 a note, an installment purchase agreement, a lease, a lease-purchase  
14 contract, or any other similar agreement, whether secured or unsecured;  
15 provided, that the obligation shall mature over a period of, or have a term,  
16 not to exceed five (5) year~~s~~;

17 (2) ~~"Formula rate" means that rate of interest which is five~~  
18 ~~percentage points (5%) above the equivalent bond yield of one year United~~  
19 ~~States Treasury Bills offered by the United States Treasury at the last~~  
20 ~~auction during the immediately preceding calendar quarter, calculated by~~  
21 ~~rounding up to the nearest one fourth of one percentage point (0.25%) (unless~~  
22 ~~the equivalent bond yield is already by a multiple of one fourth of one~~  
23 ~~percentage point), and announced by the State Bank Commissioner (or such~~  
24 ~~successor official who may be performing substantially the same duties) from~~  
25 ~~information available from the Federal Reserve System of the United States.~~  
26 ~~The calculation of the formula rate shall be made on or before the tenth~~  
27 ~~(10th) day of each calendar quarter. The formula rate so calculated shall be~~  
28 ~~effective on the eleventh (11th) day of the calendar quarter and shall~~  
29 ~~continue in effect until the formula rate for the succeeding calendar quarter~~  
30 ~~shall have been calculated and becomes effective. If, for any reason, the~~  
31 ~~United States ceases to issue one year Treasury Bills, such calculation shall~~  
32 ~~be made using a debt instrument of the United States having substantially the~~  
33 ~~same general character and maturity. The calculation and announcement of the~~  
34 ~~formula rate by the State Bank Commissioner shall be final.~~

35 (c) The provisions of this section shall be self-executing.

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*/s/Files*

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