FSPPC306

UNIVERSITY OF ARKANSAS
DIVISION OF AGRICULTURE

PUBLIC POLICY Center

Issue No. 2
AN AMENDMENT CONCERNING INTEREST RATE LIMITS AND THE ISSUANCE OF GOVERNMENT BONDS FOR ENERGY EFFICIENCY PROJECTS

PROPOSED CONSTITUTIONAL AMENDMENT NO.2
(Referred to the People by the Arkansas General Assembly)

POPULAR NAME: An amendment concerning interest-rate limits and the issuance of governmental bonds to finance energy efficiency projects.

BALLOT TITLE: An amendment providing that constitutional provisions setting the maximum lawful rate of interest on bonds issued by and loans made by or to governmental units are repealed; the maximum lawful rate of interest on loans by federally insured depository institutions shall remain at the rate resulting from the federal preemption effective on March 1, 2009; establishing that the maximum lawful rate of interest on any other loan or contract shall not exceed seventeen percent (17%) per annum; authorizing governmental units to issue bonds to finance energy efficiency projects and allowing such bonds to be repaid from any source including general revenues derived from taxes; providing that any federal laws applicable to loans or interest rates are not superseded by the amendment; and repealing Article 19, § 13, and the interest rate provisions of Amendment Nos. 30, 38, 62, 65, and 78 of the Arkansas Constitution.

Why is the issue on the ballot of a general election?

Proposed Constitutional Amendment No. 2 is a legislatively-referred measure that the Arkansas General Assembly voted to put on the state's general election ballot. The legislature can refer up to three constitutional amendments for any one ballot. All constitutional amendments require approval by a majority of voters in a statewide election.

What does this amendment do?

The proposed amendment would:

- Remove all interest rate caps on bonds issued or loans made by governmental entities in the state of Arkansas;
- Remove state imposed interest rate limits on loans made by FDIC-insured institutions. These institutions are subject to federal regulations which set the maximum rates of interest that may be charged;

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- Keep 17 percent as the maximum annual interest rate that may be charged on other loans or contracts, but eliminate the cap of 5 percent above the federal discount rate; and
- Give constitutional authority to all governmental entities in Arkansas to issue energy efficiency project bonds, subject to laws to be adopted by the General Assembly.

How would interest rates on loans, contracts and credit sales be affected?

The proposed amendment changes the restrictions on interest rates charged to businesses and individuals for loans, contracts and credit sales. The proposed changes in interest rate restrictions differ for three groups of lending entities: (1) government entities; (2) federally insured depository institutions; and (3) all other lenders.

For all government entities, constitutional interest rate restrictions would be removed, but legislation could be passed by the General Assembly to provide restrictions. This applies to interest charged on loans they make available to borrowers as part of programs offered.

For federally insured depository institutions, the change simply adopts the federal rules that have been applicable to banks doing business in Arkansas for many years.

Other lenders would be restricted to an interest rate not exceeding 17 percent per annum, which is the existing limit for consumer debt in the Arkansas Constitution. It would eliminate the restriction that interest rates charged could not be greater than five percent above the Federal Discount Rate. Other lenders include transactions between private parties, such as a real estate transaction in which an owner finances a portion of the contract price.

How would interest rates on bonds be affected?

The proposed amendment would change the restrictions on interest rates that could be paid on bonds issued by all state and local governmental entities. Currently there are different interest rate restrictions for different types of bonds issued. Some local government bonds cannot pay more than two percent above the Federal Reserve Rate and other bonds can pay interest rates up to five percent above the Federal Discount Rate. Most local government bonds issued are secured by specific taxes, such as a sales tax. Such bonds can pay interest not to exceed two percent above the Federal Reserve Rate when approved by voters.

The proposed amendment would eliminate all interest rate restrictions on all state and local government bonds. It would also give the General Assembly the authority to set interest rate limits on various types of bonds issued by governmental units.

What does current law say about issuing state bonds?

Amendment 20 of the Arkansas Constitution says that the state may issue new general obligation bonds only if approved by a majority vote in a general or special election. General obligation bonds are secured by any revenue source available to the state. There are two constitutional exceptions.

- Amendment 65 states that revenue bonds may be issued by the state without an election.

Interest Rates on Bonds, Loans and Contracts

Type of Institution/Lender	Present Law	If Amendment No. 2 Passes
For all government debt not secured by specific taxes (such as State general obligation and revenue bonds) and for all government loans	Cannot exceed five percentage points above the Federal Reserve Discount Rate at the time of the loan.	No interest rate limits imposed by amendment. The General Assembly will have the authority to set interest rate limits. State general obligation bonds must still be voter approved.
Local Government Bonds secured by specific taxes (such as a sales tax)	Cannot exceed two or five percentage points (depending on the issue) above the Federal Reserve Discount Rate at the time the bonds are approved by voters.	No interest rate limits imposed by amendment. The General Assembly will have the authority to set interest rate limits. Bonds secured by taxes must still be voter approved.
Federally Insured Depository Institutions (e.g., banks, credit unions, etc.)	Such institutions are not subject to Arkansas limits because they have been overridden by Federal law.	The Federal limit effective March 1, 2009 is adopted for Arkansas Constitution.
Other Lenders	Cannot exceed five percentage points above the Federal Reserve Discount Rate at the time of the loan, with a maximum rate of 17 percent per annum for consumer debt.	Keep maximum rate of 17 percent per annum for all transactions, but eliminate restriction that interest rate charged cannot be more than five percentage points above the Federal Reserve discount rate.

Revenue bonds are different from general obligation bonds in that they must be secured by revenues, such as user fees from the project or improvement for which the bonds are issued. Amendment 65 also applies to revenue bonds issued by local governments.

- Amendment 82 currently allows the General Assembly to authorize the Arkansas Development Finance Authority to issue general obligation bonds to attract large economic development projects under certain circumstances.

How would the energy efficiency bonds work?

It depends on the terms of the bond issue. A bond is evidence of debt issued by a state or local governmental entity. In return for purchasing the bond, the bond holder (investor) will receive interest payments as well as the original investment on a schedule predetermined at the time the bond is issued. To retire the bonds, the unit of government would have to repay that total amount issued, plus the interest payments associated with it, over a specified period of time. The proposed amendment states that bonds can be repaid from any source including general revenues derived from taxes. The proposed amendment does not define eligible energy efficiency projects but authorizes the General Assembly to establish the requirements to issue this type of debt. Typically, these projects have included a guarantee of the savings by the party that installs the improvements.

The following statements are what supporters and opponents have made public either in media statements and literature or on websites. The University of Arkansas does not endorse or in any way validate these statements.

What do supporters say?

The bill was introduced because the sponsor(s) believed it would help Arkansas become more economically competitive and make government facilities more energy efficient. By removing interest rate restrictions on government bonds and simplifying the limit for other debt, the sponsor(s) contend that: (1) much needed projects could be funded with bonds and (2) local Arkansas businesses could sell more goods and services to Arkansas consumers on terms more favorable than currently available. Supporters say the existing rules currently produce below market interest rate caps that either severely restrict or prevent the financing of legitimate business activity or important public projects. Also, supporters point out that governmental entities could realize significant savings by simplifying the financing of projects that are supported by guaranteed savings.

The Arkansas Municipal League has formally endorsed the proposed amendment. The Municipal League has said it would make the state more competitive. The organization contends that current limits on interest rates paid on municipal tax supported bonds and revenue bonds restrict interest on the bonds to levels substantially below market requirements, and in some cases has halted the financing of public projects. The Arkansas Municipal League also believes the measure would offer flexibility for state government and municipalities to lower the interest paid on bonds by being better able to take advantage of low interest rate environments.[1] It is also suggested that the caps can require a government to wait until rates go up to issue bonds, thereby increasing costs for taxpayers.

The Arkansas State Chamber of Commerce also formally endorsed the measure and has stated it will organize a grassroots effort in support of the proposed amendment.

Furniture and car dealers support the measure saying it would help them stay in business during tough economic times. One furniture store owner said his store and others are losing money, but could increase their customer base and sell more furniture if not restricted by the current interest rate they can charge. And, they say that many Arkansas consumers now relying on out of state lenders or lease to own financing would be able to obtain in-state financing and get it at a reasonable cost.

What do opponents say?

At the time this fact sheet was printed, there was no identified organized opposition to the proposed amendment. Individuals have expressed concern regarding various components of the measure. They have said that the complexity of including three seemingly separate issues creates potential for voter confusion. Also, they argue that allowing businesses to charge higher interest rates could encourage consumers to make purchases that put them further in debt, increasing debt burden during a time of economic crisis and record bankruptcy filings.

Concerns have also been raised that citizens of Arkansas would be transferring the power to approve

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[1] *http://www.arml.org/documents/AMLEndorsementofIssueNo.2andNo.3.pdf, accessed on August 24, 2010.*

the magnitude and terms of bonds for energy efficiency projects to the General Assembly. The scope of the projects that could be funded is undetermined as "energy efficiency projects" are not defined in the proposed amendment and opponents also point out that there are no limits on the amount of bonds that may be issued.

Opponents question why no rationale was provided for the promotion of energy efficiency bonds over other bonds that would also reduce cost to state and local government. Another issue that opponents find troublesome is that debt service for energy efficiency project bonds could be required to be paid before funding other governmental services. Depending on the amount of bonds issued, this could diminish funds available for other state and local spending.

When does the legislation take effect, if passed?

The proposed amendment, if approved, would go into effect on January 1, 2011.

What does a "FOR" vote mean?

A "FOR" vote means you favor changing the Arkansas constitution to eliminate all state imposed interest rate restrictions on loans, contracts and bonds (except the 17 percent interest rate cap on non-government and non-FDIC insured loans and contracts) and permit all governmental entities to issue bonds for energy efficiency projects, subject to conditions imposed by the Arkansas General Assembly. Also, the Arkansas General Assembly would have the authority to enact the interest rate limits for governmental debt.

What does an "AGAINST" vote mean?

An "AGAINST" vote means you are not in favor of making the proposed changes to the Arkansas constitution.

Where can I find more information?

The complete and official text of each ballot measure can be obtained through the Arkansas Secretary of State's Office:

- Phone: 501-682-1010
- Website: *http://www.votenaturally.org /2010_ballot_issues.html*.

For additional information, including links to major support and opposition groups, please visit the University of Arkansas Division of Agriculture's Public Policy Center website at *http://ppc.uaex.edu* or contact your county Cooperative Extension Service office.

The following is the proposed constitutional amendment as it will appear on the state's November 2 General Election ballot.

(Title)

AN AMENDMENT PROVIDING THAT CONSTITUTIONAL PROVISIONS SETTING THE MAXIMUM LAWFUL RATE OF INTEREST ON BONDS ISSUED BY AND LOANS MADE BY OR TO GOVERNMENTAL UNITS ARE REPEALED; THE MAXIMUM LAWFUL RATE OF INTEREST ON LOANS BY FEDERALLY INSURED DEPOSITORY INSTITUTIONS SHALL REMAIN AT THE RATE RESULTING FROM THE FEDERAL PREEMPTION EFFECTIVE ON MARCH 1, 2009; ESTABLISHING THAT THE MAXIMUM LAWFUL RATE OF INTEREST ON ANY OTHER LOAN OR CONTRACT SHALL NOT EXCEED SEVENTEEN PERCENT (17%) PER ANNUM; AUTHORIZING GOVERNMENTAL UNITS TO ISSUE BONDS TO FINANCE ENERGY EFFICIENCY PROJECTS AND ALLOWING SUCH BONDS TO BE REPAID FROM ANY SOURCE INCLUDING GENERAL REVENUES DERIVED FROM TAXES; PROVIDING THAT ANY FEDERAL LAWS APPLICABLE TO LOANS OR INTEREST RATES ARE NOT SUPERSEDED BY THE AMENDMENT; AND REPEALING ARTICLE 19, § 13, AND THE INTEREST RATE PROVISIONS OF AMENDMENT NOS. 30, 38, 62, 65, AND 78 OF THE ARKANSAS CONSTITUTION.

(Popular Name)

AN AMENDMENT CONCERNING INTEREST-RATE LIMITS AND THE ISSUANCE OF GOVERNMENTAL BONDS TO FINANCE ENERGY-EFFICIENCY PROJECTS

FOR ISSUE NO. 2
AGAINST ISSUE NO. 2

Exercising your voting privilege

We live in a democratic society where voting is a privilege of citizenship. Democracy works best when informed citizens exercise their voting privilege. Please vote November 2, 2010.

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