



Legislation Text

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AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW, SECTION 14-164-201 ET SEQ., ARKANSAS CODE ANNOTATED, AS AMENDED, AND THE REVENUE BOND ACT OF 1987, SECTION 19-9-601 ET SEQ., ARKANSAS CODE ANNOTATED, AS AMENDED, BY THE CITY OF JONESBORO, ARKANSAS, OF ITS INDUSTRIAL DEVELOPMENT REFUNDING REVENUE BONDS (ANHEUSER-BUSCH PROJECT) SERIES 2002 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$6,200,000, FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF REFUNDING THE ISSUER'S INDUSTRIAL DEVELOPMENT REFUNDING REVENUE BONDS (ANHEUSER-BUSCH COMPANIES, INC. PROJECT) SERIES 1992; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF JONESBORO, ARKANSAS OF A LOAN AGREEMENT, INDENTURE OF TRUST, TAX REGULATORY AGREEMENT, BOND PURCHASE AGREEMENT, OFFICIAL STATEMENT AND SUCH BONDS IN CONNECTION THEREWITH; AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Jonesboro, Arkansas (the "Issuer") is authorized and empowered by the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Section 14-164-201 et seq., Arkansas Code Annotated, as amended, and the Revenue Bond Act of 1987, Section 19-9-601 et seq., Arkansas Code Annotated, as amended (collectively, the "Act"), to issue its revenue bonds for the purpose of financing land, buildings or facilities of any and every nature whatsoever that can be used in securing or developing industry within or near the Issuer upon such terms as the City Council of the Issuer shall deem advisable and as shall not conflict with the provisions of the Act and to refund any of such bonds; and

WHEREAS, in order to accomplish the purpose of the Act, the Issuer determined it necessary and advisable to issue its Industrial Development Revenue Bonds (Anheuser-Busch Companies, Inc. Project) Series 1982 in the aggregate principal amount of \$6,200,000 (the "1982 Bonds") to finance the costs of the acquisition, construction and installation of certain facilities, including buildings, equipment and related facilities suitable for use as a new rice mill facility (the "Project") for Anheuser-Busch Companies, Inc. (the "Company") and its wholly owned subsidiary, Anheuser-Busch, Incorporated ("ABI"), which Project is located in unincorporated Craighead County near the Issuer and is used by Busch Agricultural Resources, Inc., a wholly owned subsidiary of Anheuser-Busch Companies, Inc. (the "User"), and which Project qualifies as "facilities" which may be financed pursuant to the Act; and

WHEREAS, in order further to accomplish the purpose of the Act, the Issuer determined it necessary and advisable to issue its Industrial Development Refunding Revenue Bonds (Anheuser-Busch Project) Series 1992 (the "Prior Bonds") for the purpose of paying a portion of the cost of refunding the 1982 Bonds; and

WHEREAS, the Company has requested the Issuer to issue its Industrial Development Refunding Revenue Bonds (Anheuser-Busch Project) Series 2002 in the aggregate principal amount of not to exceed \$6,200,000 (the "Bonds") for the purpose of paying a portion of the cost of refunding the Prior Bonds; and

WHEREAS, the City Council of the Issuer has heretofore and does now find and determine that financing and

refinancing the costs of the Project through the issuance of the 1982 Bonds and the Prior Bonds, respectively, and refunding the Prior Bonds through the issuance of the Bonds, which will result in interest savings to the Company, have accomplished and will accomplish the purposes of the Act, including to further and better provide for industrial development and employment opportunities for the inhabitants of the Issuer, to add to the welfare and prosperity of the Issuer and its inhabitants and to aid in the securing and developing of industry within and near the Issuer and in the State of Arkansas pursuant to the Act; and

WHEREAS, a Loan Agreement dated as of October 1, 2002 (the “Agreement”) will be executed by and between the Company and the Issuer, whereby the Issuer will agree to issue the Bonds and make the proceeds available to the Company to pay a portion of the cost of refunding the Prior Bonds and the Company will covenant and agree to make installment payments sufficient to provide for the payment of principal of, premium, if any, and interest on the Bonds as and when the same become due and payable; and

WHEREAS, the Bonds will be issued under and pursuant to, and are to be secured by, an Indenture of Trust dated as of October 1, 2002 (the “Indenture”) by and between the Issuer and BNY Trust Company of Missouri, as Trustee (the “Trustee”); and

WHEREAS, in connection with the issuance of the Bonds it is necessary to enter into a Tax Regulatory Agreement dated as of October 1, 2002 (the “Tax Regulatory Agreement”) among the Issuer, the Company and the Trustee; and

WHEREAS, it is proposed that the Issuer sell the Bonds to Banc One Capital Markets, Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) among the Issuer, the Company and the Underwriter; and

WHEREAS, it is proposed that the Issuer authorize the distribution and use of a preliminary Official Statement (the “Preliminary Official Statement”) and the distribution, use and execution of a final Official Statement (the “Official Statement”) to be used in connection with the offer and sale of the Bonds; and

WHEREAS, there have been presented to this meeting forms of the following documents which the City Council proposes to approve or enter into:

- (A) The Indenture (including the form of the Bonds);
- (B) The Agreement;
- (C) The Tax Regulatory Agreement;
- (D) The Bond Purchase Agreement; and
- (E) The Preliminary Official Statement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas:

SECTION 1: The Issuer shall refinance costs of the acquisition, construction and installation of the Project through the issuance of the Bonds and shall apply the proceeds of the Bonds to refund the Prior Bonds in accordance with the provisions of the Agreement and the Indenture for the purposes described above.

SECTION 2: The Issuer is hereby authorized to issue and sell not to exceed \$6,200,000 aggregate principal

amount of the Bonds to the Underwriter at a purchase price of not less than 99% of the principal amount of the Bonds to be purchased plus accrued interest from the date of the Bonds.

The Bonds shall be substantially in the form set forth in the Indenture, with appropriate insertions and revisions in order to comply with the provisions of this Ordinance and the Indenture (as executed) and shall be issued in fully registered form in the denominations of \$5,000 or any integral multiple thereof. The Bonds shall mature not later than November 15, 2012 and shall bear interest at a rate not to exceed 5.50% per annum. Interest on the Bonds shall be payable semiannually on May 15, 2003 and on each November 15 and May 15 thereafter until paid. The Bonds shall be dated October 1, 2002 (or such other date as provided in the Indenture, as executed).

The Bonds shall be issued pursuant to and in full compliance with the provisions of the Act and shall be subject to mandatory and optional redemption and other terms and conditions and shall be issued in such manner and subject to such provisions, covenants and agreements as are specified in the Indenture, as executed.

The Mayor of the Issuer is hereby authorized to approve, on behalf of the Issuer, the principal amount of the Bonds to be issued, the purchase price for the sale of the Bonds to the Underwriter, the final maturity of the Bonds, the rate of interest to be borne by the Bonds, the optional and mandatory redemption provisions (if any) of the Bonds and the other terms and provisions of the Bonds, all in accordance with the provisions of this Section, with his execution and delivery of the Bond Purchase Agreement and Indenture describing such terms and provisions to constitute conclusive evidence of such approval.

The Bonds shall be issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas and under the provisions of the Act. The Bonds are special obligations of the Issuer payable solely out of the revenues and receipts derived by the Issuer from the Project pursuant to the Agreement or otherwise as provided in the Indenture, and the Issuer's rights under the Agreement (except for certain of the Issuer's rights to indemnification, to attorneys' fees and to reimbursement for expenses) are hereby pledged and assigned to the Trustee as security for payment of the Bonds as provided in the Indenture, as executed, and such revenues and receipts shall not be pledged or hypothecated in any manner except as provided in the Indenture and Agreement, as executed. The Bonds shall not constitute an indebtedness of the Issuer or a loan of credit thereof within the meaning of any constitutional or statutory limitation. The Bonds shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner from revenues raised by taxation.

SECTION 3: The Issuer is hereby authorized to enter into the Agreement, in substantially the form presented to this meeting, under which the Issuer shall refinance costs of the Project for the Company upon the terms and conditions as set forth in the Agreement, submitted to the City Council of the Issuer on the date hereof, with such changes not inconsistent with this Ordinance as shall be approved by the officers of the Issuer executing the Agreement, such officers' signatures thereon being conclusive evidence of their approval thereof.

SECTION 4: The Issuer is hereby authorized to enter into the Indenture, in substantially the form presented to this meeting, under which the Issuer shall pledge and assign its rights under the Agreement (except for certain of the Issuer's rights to indemnification, to attorneys' fees and to reimbursement for expenses) to the Trustee for the benefit of the holders and owners of the Bonds upon the terms and conditions as set forth in the Indenture, submitted to the City Council of the Issuer on the date hereof, with such changes not inconsistent with this Ordinance as shall be approved by the officers of the Issuer executing the Indenture, such officers' signatures thereon being conclusive evidence of their approval thereof.

SECTION 5: The Issuer is hereby authorized to enter into the Tax Regulatory Agreement, in substantially the

form presented to this meeting, submitted to the City Council of the Issuer on the date hereof, with such changes not inconsistent with this Ordinance as shall be approved by the officer of the Issuer executing the Tax Regulatory Agreement, such officer's signature thereon being conclusive evidence of such approval.

SECTION 6: The Issuer is hereby authorized to enter into the Bond Purchase Agreement, in substantially the form presented to this meeting, submitted to the City Council of the Issuer on the date hereof, with such changes not inconsistent with this Ordinance as shall be approved by the officer of the Issuer executing the Bond Purchase Agreement, such officer's signature thereon being conclusive evidence of such approval.

SECTION 7: The Preliminary Official Statement, in substantially the form presented to this meeting, submitted to the City Council of the Issuer on the date hereof, and the Official Statement, in substantially the form of the Preliminary Official Statement but with appropriate variations to reflect the final terms of the issue of the Bonds herewith approved, are hereby approved with such changes not inconsistent with this Ordinance as shall be approved by the officer of the Issuer executing the Official Statement, such officer's signature thereon being conclusive evidence of such approval. Distribution and use of the Preliminary Official Statement and the Official Statement by the Underwriter in connection with the sale of the Bonds is hereby approved, and the Preliminary Official Statement, insofar as it describes the Issuer, is hereby "deemed final" within the meaning of Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

SECTION 8: The Mayor of the Issuer is hereby authorized and directed to cause the Bonds to be prepared in the form now before this meeting and hereby approved. The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of its Mayor and shall be attested by the manual or facsimile signature of its City Clerk, as provided in the Indenture, as executed, and the seal of the Issuer or a facsimile thereof shall be imprinted or impressed on the Bonds. The Mayor, the City Clerk or any other officer of the Issuer is hereby authorized and directed to deliver the Bonds to the Trustee for authentication, as so executed, for and on behalf of, and as the act and deed of, the Issuer in the manner provided in the Indenture, as executed, and the Trustee is hereby requested to authenticate the Bonds in accordance with the Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Indenture, the Agreement, the Tax Agreement, the Bond Purchase Agreement and the Official Statement, the City Clerk of the Issuer is hereby authorized and directed to attest the Agreement and the Indenture and the Mayor and the City Clerk are hereby authorized and directed to execute, attest and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, all for and on behalf of, and as the act and deed of, the Issuer.

SECTION 9: The Issuer hereby elects to have the provisions of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, apply to the issue of the Bonds.

SECTION 10: The Issuer shall, and the officers and agents of the Issuer are hereby authorized and directed to, take such action and execute such other documents, financing statements, certificates and instruments, including, without limitation, a Letter of Representations with The Depository Trust Company and an agreement for payments in lieu of taxes (if any), as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds, the Agreement, the Indenture, the Tax Regulatory Agreement and the Bond Purchase Agreement, as executed, and all acts and doings of the officers of the Issuer which are in conformity with the purposes and intent of this Ordinance and in furtherance of the issuance and sale of the Bonds shall be, and are hereby in all respects, authorized, approved and confirmed.

SECTION 11: The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase

or provision shall for any reason be declared invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

SECTION 12: All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 13: After the Bonds are issued, this Ordinance shall be and remain irrepealably until the Bonds and the interest thereon shall have been fully paid, cancelled and discharged.

SECTION 14: It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this City Council, and that all deliberations of this City Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 15: The City Clerk is hereby directed to file in the office of the City Clerk a copy of each of the documents presented to this meeting, including the Agreement, the Indenture, the Tax Regulatory Agreement, the Bond Purchase Agreement and the Preliminary Official Statement, which copies shall remain on file in the office of the City Clerk for inspection by any interested person in accordance with the Act.

PASSED AND APPROVED this 3rd day of September, 2002.