



Legislation Text

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File #: ORD-82:1814, Version: 1

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AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW, ACTS 1960 (EX. SESS.), NO.9, BY THE CITY OF JONESBORO, ARKANSAS, OF ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS (ANHEUSER-BUSCH COMPANIES, INC. PROJECT) SERIES 1982, FOR THE PURPOSE OF FINANCING CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF JONESBORO, ARKANSAS OF AN AGREEMENT OF SALE, INDENTURE OF TRUST, BOND PURCHASE AGREEMENT, OFFICIAL STATEMENT AND SUCH BONDS IN CONNECTION THEREWITH; DECLARING AN EMERGENCY; AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH (**NOTE: THIS ORDINANCE WAS AMENDED BY ORD-82:1809 ON DECEMBER 20, 1982**)

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, Acts 1960 (Ex. Sess.), No.9, as amended (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

WHEREAS, in order to accomplish the purpose of the Act; the Issuer has determined it necessary and advisable 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., a Delaware corporation, and its wholly-owned subsidiary, Anheuser-Bush, Incorporated (together, the “Companies”), which Project will be located within or near the Issuer and will be 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, this City Council did on December 7, 1981 adopt a resolution, indicating its intent to issue industrial development revenue bonds of the Issuer for financing the cost of the Project; and

WHEREAS, the Companies have advised the Issuer that the cost of the Project proposed to be financed with industrial development revenue bonds of the Issuer, together with the costs incident to the authorization, issuance and sale of such bonds, is currently estimated to be \$6,200.000; and

WHEREAS, it is now proposed that the Issuer finance the cost of the acquisition, construction and installation of the Project through the issuance of its Industrial Development Revenue Bonds (Anheuser-Bush Companies, Inc. Project) Series 1982 in the aggregate principal amount of \$6,200.000 (the “Bonds”) and sell the Project to the Companies; and

WHEREAS, the City Council of the Issuer has heretofore and does now find and determine that in order 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, it is desirable

to provide for the issuance of the Bonds to finance all or a portion of the cost of the Project and to pay expenses incidental to the issuance of the Bonds; and

WHEREAS, an agreement of Sale dated as of November 15, 1982 (the "Agreement") with respect to the Project will be executed by and among the Companies and the Issuer, whereby the Issuer will sell the Project to the Companies and the Companies will covenant and agree (I) to make installment payments as the purchase price for the project 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 (such obligation to be evidenced by the Companies' Series 1982 Promissory Note in the amount of \$6,200,000, herein after called the "Note") and (II) to make such other payments and satisfy such other obligations as may be required by the Act; and

WHEREAS, the Bonds will be issued under and pursuant to, and are to be secured by, an Indenture of Trust Dated as of November 15, 1982 (the "Indenture") by and between the Issuer and MERCANTILE TURST COMPANY, N.A., as Trustee (the "Trustee"); and

WHEREAS, it is proposed that the Issuer enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") by and between the Issuer and Dillon, Read & Co. Inc., as underwriter (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 (including the form of Note);
- C. The Bond Purchase Agreement;
- D. The Preliminary Official Statement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS AS FOLLOWS:

Section 1: The Issuer shall finance the acquisition, construction and installation of the Project with the proceeds of the Bonds and shall sell the Project to the Companies in accordance with the provisions of the Agreement for the purposes described above.

Section 2: The Issuer is hereby authorized to issue and sell \$6,200,000 aggregate principal amount of the Bonds to the Underwriter at a purchase price of not less than 95% of the principal amount of the Bonds to be purchased plus accrued interest from the date of the Bonds, to be issued for the purpose of providing funds to pay the cost of acquiring, constructing and installing the Project and costs of issuing 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 coupon form in the denomination of \$5,000 each or in fully registered form in the denominations of \$5,000 or any integral multiple thereof. The Bonds shall mature not later than 30 years from their date of issue and shall bear interest at a rate not to exceed twelve per cent (12%) per annum. Interest on the Bonds shall be payable semiannually on May 15, 1983 and on each November 15 and May 15 thereafter until paid. The Bonds shall be

dated November 15, 1982 (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 purchase price for the sale of the Bonds to the Underwrite, the final maturity of the Bonds, the rate of interest to be borne by the Bonds, the optional and sinking fund redemption provisions (if any) of the Bonds and the other items and provisions of the Bonds, all in accordance with the provisions of this Section, with his execution and delivery of the Bond Purchase Agreement 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 and the Note or other wise as provided in the Indenture, and the Issuer's rights under the Agreement (except for the Issuer's rights with respect to title and conveyance of title to the Project and certain of the Issuer's rights to indemnification, to attorneys' fees and to reimbursement for expenses) and to the Note are hereby pledged and assigned to the Trustee as security for payment of the Bonds (and any Additional Bonds issued under the Indenture) as provided in the Indenture, as executed, and such revenues and receipts and the Note shall not be pledged or hypothecates 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 sell the Project to the Companies 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 the Issuer's rights with respect to title and conveyance of title to the Project and certain rights to indemnification, to Attorneys' fees and to reimbursement for expenses and to the Note 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 Note to be delivered by the Companies to evidence their obligation under the Agreement to pay as a purchase price for the Project amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds is hereby approved substantially in the form presented to this meeting, 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 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, and 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 there 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.

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, provided that at least one of such signatures shall be a manual signature, and the seal of the Issuer or a facsimile thereof shall be imprinted or impressed on the Bonds. The coupons attached to the coupon Bonds shall be executed by the manual or facsimile signature of the Mayor of the Issuer. 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 (a) execute and deliver the Indenture, the Agreement, the Bond Purchase Agreement and the Official Statement; (b) accept the Indemnity Letter of the Companies addressed to the Issuer and the Underwriter; and (c) endorse the assignment of the Note to the Trustee; for and on behalf of, and as the act and deed of, the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest the Agreement and the Indenture and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

The Mayor and the City Clerk of the Issuer are hereby authorized and directed to accept from or on behalf of the Companies or the User delivery of a deed and a bill of sale for the Project and to execute, attest and deliver a deed and a bill of sale re-conveying the Project to the Companies or the User pursuant to the terms of the Agreement as executed.

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 and the Mayor or City Clerk of the Issuer be and hereby is authorized, empowered and directed to file such election with the Internal Revenue Service for and on behalf of the Issuer.

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, and agreement for payments in lieu of taxes and a certificate or certificates to substantiate the conclusion that the Bonds are not "arbitrage bonds" within the meaning of Section 103 (c) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated or proposed thereunder, 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 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 and the financing of the Project shall be, and are hereby in all respects, authorized, approved and confirmed.

Section 11: Since the Issuer is here involved with the constructing and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the City Council of the Issuer that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council of the Issuer pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 12: The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase of 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 13: 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 14: After the Bonds are issued, this Ordinance shall be and remain irrevocably until the Bonds and the interest thereon shall have been fully paid, cancelled and discharged.

Section 15: 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 16: 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 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.

Section 17: It is hereby found and determined that interest rates on obligations such as the Bonds have recently declined to levels significantly lower than those prevailing earlier in 1982. Currently, the prevailing level of interest rates on obligations such as the Bonds is below the rate set forth in Section 2 hereof relating to the rate of interest on the Bonds. Due to the volatility of such rates of interest, there can be no assurance that such rates will remain at the current favorable levels. Therefore, in order to provide sufficient flexibility for the Bonds to be sold, or the Bond Purchase Agreement to be entered into, within the 30 days next succeeding the date of the adoption of this Ordinance, so as to best ensure the ability of the Issuer to issue the Bonds at a rate coinciding with the current level of market rates and below the limit set forth herein, an emergency is hereby declared to exist; therefore, in order to best ensure that the Issuer may issue the Bonds to aid in the financing of the Project, an emergency is hereby declared to exist and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon passage.

PASSED and APPROVED on this 15<sup>th</sup> day of November, 1982.