

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4
5 By: Senator Broadway
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As Engrossed: S12/19/03 S1/15/04

Call Item 4

A Bill

SENATE BILL 34

For An Act To Be Entitled

AN ACT TO ASSIST SCHOOL DISTRICTS IN THE
ACQUISITION OF ENERGY CONSERVATION MEASURES; AND
FOR OTHER PURPOSES.

Subtitle

AN ACT TO ASSIST SCHOOL DISTRICTS IN THE
ACQUISITION OF ENERGY CONSERVATION
MEASURES.

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

SECTION 1. Arkansas Code § 6-20-402(a)(2), concerning limitations on current school district indebtedness and postdated warrants and installment contracts, is amended to read as follows:

(2) School districts may issue postdated warrants or enter into installment contracts or short-term lease-purchase agreements for the following purposes:

(A) Purchase of school buses;

(B) Payment of premiums of insurance policies on school buildings, facilities, and equipment in instances where the insurance coverage extends three (3) years or longer;

(C) Purchase of equipment;

(D) Installation or purchase, or both, of energy conservation measures in school facilities;

~~(D)~~(E) Repair and renovation of school facilities;

~~(E)~~(F) Purchase of school sites;

~~(F)~~(G) Payment on loans secured for settlement resulting



1 from litigation against a school district;

2 ~~(G)~~(H) Payment of the district's pro rata part of
3 employing professional appraisers as authorized by laws providing for the
4 appraisal or reappraisal and assessment of property for ad valorem tax
5 purposes; and

6 ~~(H) Purchase of energy conservation measures; and~~

7 (I) The professional development and training of teachers
8 or other programs authorized under the federally recognized Qualified Zone
9 Academy Bond program codified at 26 U.S.C. § 1397E.

10
11 SECTION 2. Arkansas Code § § 6-20-402(b), concerning limitations on
12 current indebtedness and postdated warrants and installment contracts of
13 school districts, is amended to read as follows:

14 (b)(1)(A) Except as provided in ~~subdivision~~ subdivisions (b)(1)(B) and
15 (b)(1)(C) of this section, postdated warrants, short-term lease-purchase
16 agreements, and installment contracts must be paid within ten (10) years of
17 the date of issuance of the postdated warrant or the execution of the written
18 lease-purchase agreement or installment contract, as the case may be.

19 (B) A school district's acquisition of energy conservation
20 measures under § 6-20-405 may be financed by the school district over a
21 twenty-year period after the execution by the school district of the
22 postdated warrants, lease-purchase agreement, or installment contract.

23 ~~(B)~~(C) Long-term lease agreements allowed under
24 subdivision (a)(1)(B) must be paid within thirty (30) years of the date of
25 the execution of the written lease-purchase agreement.

26 ~~(G)~~(D) Postdated warrants, lease-purchase agreements, and
27 installment contracts must be registered on forms provided by the State Board
28 of Education with the treasurer of the district and the board.

29 (2)(A) Lease-purchase agreements and installment contracts must
30 have attached thereto a schedule of the rent or installments to be paid
31 showing:

- 32 (i) The payee and any assignee;
- 33 (ii) The school district;
- 34 (iii) The purpose of the purchase or payment;
- 35 (iv) The due date of each installment; and
- 36 (v) The amount of principal and interest of each

1 installment and the fiscal year in which the installment is to be paid.

2 (B) A copy of each contract and of the schedule of
3 payments shall be filed with the treasurer of the district and with the
4 board, and when so filed, each installment may be paid as it becomes due.

5 ~~(3)(A)~~ The Except as provided in subdivision (b)(3)(B) of this
6 section, the unpaid principal amount of postdated warrants issued and
7 installment contracts and lease-purchase agreements entered into shall be a
8 part of the total debt of the district as limited by §§ 6-20-803 and 6-20-
9 1202, with the district fiscal officer and his surety liable for exceeding
10 the limitations.

11 (B) The unpaid principal amount of postdated warrants,
12 lease-purchase agreements, or installment contracts entered into in
13 connection with a guaranteed energy savings contract under § 6-20-405 shall
14 not be a part of the total debt of the district.

15 (4) A copy of any guaranteed energy savings contract that is
16 executed in connection with the acquisition, installation, or construction of
17 energy conservation measures under this section shall be filed with the
18 Department of Education.

19 ~~(4)(5)~~ Payments by a school district pursuant to postdated
20 warrants, installment contracts, and lease-purchase agreements shall be
21 charged against the budget of the school fiscal year in which they become due
22 and shall be paid out of the revenue receipts for that fiscal year.

23 ~~(5)(6)~~ All warrants issued or installment contracts and lease-
24 purchase agreements entered into in excess of the revenue of a school
25 district for a school fiscal year are null and void except as herein
26 provided.

27 ~~(6)(7)~~ It shall be the duty of the school fiscal officer to
28 indicate on each school district warrant or on the schedule of payments
29 attached to a written installment contract or lease-purchase agreement the
30 school year's revenues against which the obligation was incurred and is to be
31 paid, and it shall be unlawful for the school fiscal officer to issue a
32 school district warrant or to enter into an installment contract or lease-
33 purchase agreement the installments for which are to be charged against the
34 revenues of a school year if the obligation thereof was incurred in a
35 different school year except as otherwise authorized herein.

36 ~~(7)(8)~~ The school fiscal officer may comply with the provisions

1 of this section by indicating on each warrant or schedule of payments
 2 attached to any installment contract or lease-purchase agreement the school
 3 year's revenues against which each payment is to be charged, or he may use a
 4 warrant of a distinct color for a particular year and shall advise the county
 5 treasurer, if the county treasurer serves as the school district treasurer,
 6 in writing of the color of warrant being used for credit against the revenues
 7 of a particular year.

8 ~~(8)~~(9) The county treasurer, or the district treasurer if the
 9 school district has its own treasurer, and his surety shall be jointly liable
 10 with the school fiscal officer and his surety for the payment of any school
 11 warrant or payment on a contract or agreement which is charged against the
 12 revenues of a school year if the amount thereof is in excess of the revenue
 13 receipts of the district for the school year against which the school fiscal
 14 officer has indicated the payment is to be charged or if he approved the
 15 payment with knowledge that the payment is being charged by the school fiscal
 16 officer against the revenues of another school year in violation of this
 17 section.

18 ~~(9)~~(10) It is the purpose and intent of this section to place
 19 primary responsibility on the school fiscal officer and his surety for
 20 compliance with the provisions of this section and to make the county
 21 treasurer, or district treasurer if the school district has its own
 22 treasurer, and his surety liable for any payment on a warrant, contract, or
 23 agreement drawn in violation of this section where the amount of the payment
 24 exceeds the revenue receipts of the district for the school year against
 25 which it is charged as indicated on the warrant, contract, or agreement or
 26 where the county treasurer approves a payment with the knowledge that it is
 27 in payment of an obligation of a different school year as prohibited in this
 28 section.

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30 *SECTION 3. Arkansas Code § 6-20-405 is amended to read as follows:*
 31 *6-20-405. Energy savings contract.*

32 *(a) As used in this section, unless the context otherwise requires:*

33 *(1)(A) "Energy savings contract" means a contract for the*
 34 *implementation of one (1) or more energy conservation measures as defined in*
 35 *§ 6-20-401 and shall include a preinstallation energy audit or analysis.*

36 *(B) The contract may provide that all payments except*

1 obligations on termination of the contract before its expiration are to be
2 made over time and that the energy cost savings are guaranteed to the extent
3 necessary to pay the costs of the energy conservation measures.

4 (C) The energy conservation measures to be performed under
5 the contract may be paid for with either revenue or nonrevenue receipts of a
6 school district or, alternatively, financed by the issuance of postdated
7 warrants or entering into installment contracts or lease-purchase agreements.

8 (D) Obligations incurred pursuant to a guaranteed energy
9 savings contract are not included in computing a district's debt ratio;

10 (2)(A) ~~"Qualified provider" means a person or business~~
11 ~~experienced or trained in the design, implementation, or installation of~~
12 ~~energy conservation measures who possesses a valid Arkansas contractor's~~
13 ~~license~~ business that possesses a valid Arkansas contractor's license and
14 that is experienced in the analysis, design, implementation, and installation
15 of energy efficiency and facility improvement measures, and who has
16 demonstrated the ability to secure necessary financial measures to support
17 energy savings guarantees, the technical capabilities to ensure such measures
18 generate energy cost savings, and the ability to provide maintenance and
19 ongoing measurement of these measures to ensure and verify energy savings.

20 (B) A qualified provider to whom the contract is awarded
21 may be required to give a sufficient bond to the school district for its
22 faithful performance of the equipment installation or accomplishment of the
23 guaranteed savings; and

24 (3)(A) "Request for proposals" means a negotiated procurement.

25 (B)(i) Notice of the request for proposals shall be
26 published one (1) time each week for no fewer than two (2) consecutive weeks
27 in a newspaper of the school district's choosing and having a circulation in
28 the county or city where the contract is to be performed.

29 (ii) Proposals shall be sealed and opened in a
30 public forum at a date within ten (10) days from the last publication, at
31 which point the district shall evaluate the proposals.

32 (b) A school district may utilize a request for proposals to negotiate
33 an energy savings contract or may enter into an energy savings contract with
34 a qualified provider after evaluating any proposal received from a qualified
35 provider through a method other than a request for proposal.

36 (c)(1) A school district may enter into a guaranteed energy savings

1 contract with a qualified provider if it finds that the amount it would spend
2 on the energy conservation measures recommended in the proposal would not
3 exceed the amount to be saved in either energy or operational costs, or both,
4 within a ~~fifteen-year period~~ twenty (20) years from the date of installation
5 if the recommendations in the proposal are followed ~~or, for a guaranteed~~
6 ~~energy savings contract that includes installation of a water source system~~
7 ~~for heating, ventilation, and air conditioning equipment, a twenty-year~~
8 ~~period from the date of installation if the recommendations in the proposal~~
9 ~~are followed.~~

10 (2) The qualified provider's proposal shall include:

11 (A) The estimates of all costs of installation,
12 modifications, or remodeling, including, without limitation, costs of a
13 preinstallation energy audit or analysis, design, engineering, installation,
14 maintenance, repairs, debt service, postinstallation project monitoring, and
15 data collection and reporting, as well as whether energy consumed or the
16 operating costs, or both, will be reduced;

17 (B) The qualifications of the provider; and

18 (C) Certification that all energy-consuming products
19 utilized in the projects will be certified with the appropriate standards by
20 the Air Conditioning and Refrigeration Institute.

21 (3) The district may select the qualified provider or providers
22 best qualified and capable of performing the desired work and negotiate an
23 energy savings contract for the project.

24 (d) The qualified provider shall reimburse the school district for any
25 shortfall of guaranteed energy savings projected in the project.

26 (e) This section shall constitute the sole authority necessary to
27 accomplish the purposes of this section without regard to compliance with
28 other laws which may specify procedural requirements for execution of
29 contracts.

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31 /s/ Broadway
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