

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

SENATE BILL 679

4
5 By: Senator K. Ingram

For An Act To Be Entitled

8 AN ACT TO AMEND THE LOCAL GOVERNMENT CAPITAL
9 IMPROVEMENT REVENUE BOND ACT OF 1985; AND FOR OTHER
10 PURPOSES.

Subtitle

14 TO AMEND THE LOCAL GOVERNMENT CAPITAL
15 IMPROVEMENT REVENUE BOND ACT OF 1985.

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

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20 SECTION 1. Arkansas Code § 14-164-402(12), concerning the definition of
21 "performance-based efficiency project" in the Local Government Capital
22 Improvement Revenue Bond Act of 1985, is amended to read as follows:

23 (12) "Performance-based efficiency project" means ~~an undertaking~~
24 ~~throughout which a qualified efficiency engineering company oversees the~~
25 ~~procurement of materials and services for a capital improvement or a project~~
26 ~~and the acquisition, development, design, installation, construction,~~
27 ~~maintenance, monitoring, and operation of a capital improvement or a project,~~
28 ~~causing an issuer to generate efficiency savings;~~

29 (A) A new facility that is designed to reduce the
30 consumption of energy or natural resources or result in operating cost
31 savings as a result of changes that:

32 (i) Do not degrade the level of service or working
33 conditions;

34 (ii) Are measurable and verifiable under the
35 International Performance Measurement and Verification Protocol, promulgated
36 by the Arkansas Pollution Control and Ecology Commission in the rules



1 required under § 19-11-1207; and

2 (iii) Are measured and verified by an audit
 3 performed by an independent engineer or by a qualified efficiency engineering
 4 company, including the vendor providing the performance-based efficiency
 5 project; or

6 (B) An existing facility alteration that is designed to
 7 reduce the consumption of energy or natural resources or result in operating
 8 cost savings as a result of changes that conform with subdivisions (12)(A)(i)
 9 and (ii) of this section;

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 11 SECTION 2. Arkansas Code § 14-164-402(15), concerning the definition of
 12 "qualified efficiency contract" in the Local Government Capital Improvement
 13 Revenue Bond Act of 1985, is amended to read as follows:

14 (15) "Qualified efficiency contract" means ~~a written contract~~
 15 ~~between an issuer and a qualified efficiency engineering company for the~~
 16 ~~completion of a performance-based efficiency project that contains the~~
 17 ~~following terms and conditions:~~

18 ~~(A) The qualified efficiency engineering company shall~~
 19 ~~guarantee to the issuer in writing that the issuer will derive efficiency~~
 20 ~~savings from the performance-based efficiency project;~~

21 ~~(B) The qualified efficiency engineering company shall~~
 22 ~~guarantee to the issuer the annual amount of efficiency savings to be derived~~
 23 ~~by the issuer from the performance-based efficiency project;~~

24 ~~(C) The aggregate efficiency savings guaranteed by the~~
 25 ~~qualified efficiency engineering company shall be in an amount at least equal~~
 26 ~~to the aggregate principal and interest due or projected to become due on any~~
 27 ~~bonds issued under this subchapter for the purpose of accomplishing a~~
 28 ~~performance-based efficiency project;~~

29 ~~(D) The qualified efficiency engineering company shall~~
 30 ~~guarantee to the issuer the aggregate amount of efficiency savings to be~~
 31 ~~derived by the issuer from the performance-based efficiency project by~~
 32 ~~providing in favor of the issuer;~~

33 ~~(i) A letter of credit issued by a federally insured~~
 34 ~~banking institution;~~

35 ~~(ii) An amount of cash equal to the aggregate~~
 36 ~~projected efficiency savings to be placed in escrow with an independent~~

1 ~~escrow agent;~~

2 ~~(iii) A multiyear surety bond insuring the aggregate~~
3 ~~amount of efficiency savings guaranteed by the qualified efficiency~~
4 ~~engineering company that must remain in force throughout the term of any~~
5 ~~revenue bonds issued under this subchapter to finance any costs and expenses~~
6 ~~associated with the performance based efficiency project;~~

7 ~~(iv) If the qualified efficiency engineering company~~
8 ~~has an investment grade credit rating as established in writing addressed to~~
9 ~~the issuer by an independent third party credit rating agency, a corporate~~
10 ~~guarantee of the qualified efficiency engineering company; or~~

11 ~~(v) Any combination of subdivisions (15)(D)(i)-(iv)~~
12 ~~of this section;~~

13 ~~(E) The qualified efficiency engineering company shall~~
14 ~~utilize the International Performance Measurement and Verification Protocol~~
15 ~~to measure and value the efficiency savings throughout the term of any~~
16 ~~revenue bonds issued pursuant to this subchapter;~~

17 ~~(F) The qualified efficiency engineering company on at~~
18 ~~least an annual basis shall monitor and reconcile, in units of energy or~~
19 ~~other appropriate basis depending on the type of operational cost compared,~~
20 ~~the actual energy savings derived by the issuer from the performance based~~
21 ~~efficiency project with the projected energy savings guaranteed by the~~
22 ~~qualified efficiency engineering company;~~

23 ~~(G) If the reconciliation required by subdivision (15)(F)~~
24 ~~of this section discloses that the issuer derived from the performance based~~
25 ~~efficiency project actual energy savings in an amount less than the projected~~
26 ~~energy savings, the qualified efficiency engineering company shall pay to the~~
27 ~~issuer the difference between the projected energy savings and the actual~~
28 ~~energy savings;~~

29 ~~(H)(i) Performance based efficiency project plans and~~
30 ~~specifications must be prepared by the qualified efficiency engineering~~
31 ~~company for the issuer and shall bear the seal of the professional engineer~~
32 ~~who prepared the plans and specifications.~~

33 ~~(ii) The professional engineer shall hold a valid~~
34 ~~professional engineer's license in good standing issued by the State Board of~~
35 ~~Licensure for Professional Engineers and Professional Surveyors; and~~

36 ~~(I) The qualified efficiency engineer shall provide in~~

~~favor of the issuer a payment and performance bond insuring the qualified efficiency engineering company's faithful performance of the installation and construction required under the qualified efficiency contract~~ a contract for the implementation of one (1) or more performance-based efficiency projects and services provided by a qualified efficiency engineering company in which the energy and cost savings achieved by the installed performance-based efficiency project cover all performance-based efficiency project costs, including financing, over a specified contract term;

SECTION 3. Arkansas Code § 14-164-402(16), concerning the definition of "qualified efficiency engineering company" in the Local Government Capital Improvement Revenue Bond Act of 1985, is amended to read as follows:

(16) "Qualified efficiency engineering company" means ~~any person or entity that:~~

~~(A) Holds a valid general contractor's license in good standing issued by the Contractors Licensing Board; and~~

~~(B) Develops, designs, installs, constructs, maintains, measures, monitors, and verifies the operation of a performance-based efficiency project, pursuant to a qualified efficiency contract with an issuer~~ a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

(A) Is properly licensed in the State of Arkansas;

(B) Has been reviewed and certified as a qualified efficiency engineering company under this subchapter;

(C) Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures;

(D) Has at least five (5) years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements;

(E) Has the ability to arrange or provide the necessary financing to support a qualified efficiency contract; and

(F) Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors;