

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: H3/20/15

# A Bill

HOUSE BILL 1646

5 By: Representative D. Douglas  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAWS APPLICABLE TO CERTAIN ENERGY  
9 EFFICIENCY CONTRACTS AND PROJECTS; TO AMEND THE LOCAL  
10 GOVERNMENT CAPITAL IMPROVEMENT REVENUE BOND ACT; TO  
11 AMEND THE GUARANTEED ENERGY COST SAVINGS ACT; AND FOR  
12 OTHER PURPOSES.  
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## Subtitle

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16 TO AMEND THE LAWS APPLICABLE TO CERTAIN  
17 ENERGY EFFICIENCY CONTRACTS AND PROJECTS;  
18 TO AMEND THE LOCAL GOVERNMENT CAPITAL  
19 IMPROVEMENT REVENUE BOND ACT; AND TO  
20 AMEND THE GUARANTEED ENERGY COST SAVINGS  
21 ACT.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 *SECTION 1. Arkansas Code § 6-20-405, concerning energy savings*  
27 *contracts for school districts, is amended to add an additional subsection to*  
28 *read as follows:*

29 *(f)(1) The maximum term of an energy savings contract shall not exceed*  
30 *the useful life of the energy conservation measures that are the subject of*  
31 *the energy savings contract.*

32 *(2)(A) If more than one (1) type of energy conservation measure*  
33 *is financed through a single debt issue under an energy savings contract*  
34 *under this section, the term of the debt issue shall not exceed the weighted*  
35 *average useful life of the equipment procured and installed to accomplish the*  
36 *energy conservation measures.*



1                   (B) In making the determination of the weighted average  
2 useful life of the equipment procured and installed under this subdivision  
3 (f)(2), the useful life for each item or category of equipment shall be  
4 weighted on the basis of the initial capital cost of the item or category of  
5 equipment compared to the total initial capital cost of all equipment for  
6 energy conservation measures to be financed through the single debt issue.

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8           SECTION 2. Arkansas Code § 14-164-402(15), concerning the definition  
9 of "qualified efficiency contract" under the Local Government Capital  
10 Improvement Revenue Bond Act, is amended to add an additional subdivision to  
11 read as follows:

12                   (J) To encourage the implementation of performance-based  
13 efficiency projects that result in a high level of energy and efficiency  
14 savings that can be reasonably estimated before implementation, the issuer  
15 may substitute the terms and conditions stated in subdivisions (15)(A)-(G) of  
16 this section with documentation that verifies that:

17                   (i) The performance-based efficiency project results  
18 in estimated efficiency savings that on an annual basis are equal to a  
19 minimum of one hundred thirty-five percent (135%) of the annual cost,  
20 including debt service, required to implement the performance-based  
21 efficiency project;

22                   (ii) The estimated efficiency savings of the  
23 performance-based efficiency project have been reviewed and verified by a  
24 professional engineer, as defined in § 17-30-101, who is not affiliated or  
25 associated with the qualified efficiency engineering company; and

26                   (iii)(a) If more than one (1) type of energy  
27 efficiency measure is financed through a single debt issue under a qualified  
28 efficiency contract under this subchapter, the term of the debt issue does  
29 not exceed the weighted average useful life of the equipment procured and  
30 installed to accomplish the performance-based efficiency project.

31                   (b) In making the determination of the  
32 weighted average useful life of the equipment procured and installed under  
33 this subdivision (15)(J)(iii), the useful life for each item or category of  
34 equipment shall be weighted on the basis of the initial capital cost of the  
35 item or category of equipment compared to the total initial capital cost of  
36 all equipment for energy efficiency measures to be financed through the

1 single debt issue.  
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3 SECTION 3. Arkansas Code § 14-164-405, concerning the issuance of  
4 bonds under the Local Government Capital Improvement Revenue Bond Act of  
5 1985, is amended to add an additional subsection to read as follows:

6 (c)(1) The maximum term of a qualified efficiency contract shall not  
7 exceed the useful life of the energy efficiency measures that make up the  
8 performance-based efficiency project that is the subject of the qualified  
9 efficiency contract.

10 (2) In determining the useful life of the energy efficiency  
11 measures and the overall performance-based efficiency project, the  
12 municipality or county shall consider the determination made under § 14-164-  
13 402(15)(J)(iii).  
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15 SECTION 4. Arkansas Code § 19-11-1206(a) and (b), concerning guaranteed  
16 energy cost savings contract requirements, are amended to read as follows:

17 (a) The following provisions are required in a guaranteed energy cost  
18 savings contract:

19 (1) A statement that the state agency shall maintain and operate  
20 the energy cost savings measures as defined in the guaranteed energy cost  
21 savings contract; and

22 (2) Either:

23 (A) A guarantee by the qualified provider that:

24 ~~(A)~~ (i) The energy cost savings and operational cost  
25 savings to be realized over the term of the guaranteed energy cost savings  
26 contract meet or exceed the costs of the energy cost savings measures; and

27 ~~(B)~~ (ii) If the annual energy or operational cost  
28 savings fail to meet or exceed the annual costs of the energy cost savings  
29 measure as required by the guaranteed energy cost savings contract, the  
30 qualified provider shall reimburse the state agency for any shortfall of  
31 guaranteed energy cost savings over the term of the guaranteed energy cost  
32 savings contract; or

33 (B) Documentation by the state agency verifying that:

34 (i) The energy cost savings measure:

35 (a) Satisfies the definition of "energy cost  
36 savings measure" under § 19-11-1202(1)(A)(ii); and

1 (b) Will result in estimated energy cost  
2 savings and operational cost savings that on an annual basis are equal to a  
3 minimum of one hundred thirty-five percent (135%) of the annual cost,  
4 including debt service, required to implement the energy cost savings  
5 measure;

6 (ii) The estimated operational cost savings of the  
7 energy cost savings measure have been reviewed and verified by a professional  
8 engineer, as defined in § 17-30-101, who is not affiliated or associated with  
9 the qualified provider for the project; and

10 (iii)(a) If more than one (1) type of energy cost  
11 savings measure is financed through a single debt issue under this  
12 subchapter, the term of the debt issue does not exceed the weighted average  
13 useful life of the equipment procured and installed to accomplish the energy  
14 cost savings measures.

15 (b) In making the determination of the  
16 weighted average useful life of the equipment procured and installed under  
17 this subdivision (a)(2)(B)(iii), the useful life for each item or category of  
18 equipment shall be weighted on the basis of the initial capital cost of the  
19 item or category of equipment compared to the total initial capital cost of  
20 all equipment for energy cost savings measures to be financed through the  
21 single debt issue.

22 (b) The maximum term for a guaranteed energy cost savings contract is  
23 ~~twenty~~ the lesser of:

24 (1) Twenty (20) years after the implementation of the energy  
25 cost savings measures; or

26 (2)(A) The useful life of the energy cost savings measures that  
27 are the subject of the guaranteed energy cost savings contract.

28 (B) In determining the useful life of the energy cost  
29 savings measures, the state agency shall consider the determination made  
30 under subdivision (a)(2)(B)(iii) of this section.

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32 SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 12, is  
33 amended to add an additional section to read as follows:

34 19-11-1209. Evaluation of qualified providers.

35 (a) To promote entrepreneurship and encourage increased fair and  
36 appropriate competition among qualified persons or businesses desiring to

1 expand or enter the field of completing projects involving energy cost  
2 savings measures, the Arkansas Energy Office, for purposes of certifying  
3 qualified providers, shall give full and fair consideration to each energy  
4 efficiency and facility improvement project completed by a person or  
5 business, including without limitation all subcontractors and employees of  
6 the person or business, applying for certification as a qualified provider  
7 regardless of whether:

8 (1) The project was completed under a guaranteed energy cost  
9 savings contract; and

10 (2) The financing for the project was arranged or provided by  
11 the person or business.

12 (b) The office shall evaluate and approve qualified providers, using  
13 the standards stated in § 19-11-1202 and this section, within ninety (90)  
14 days of submission by an applicant of information demonstrating that the  
15 applicant qualifies to complete energy cost savings measures as a qualified  
16 provider.

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18 */s/D. Douglas*  
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