

6-20-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Current indebtedness" means a debt obligation incurred by a school district for the purpose of paying maintenance or general operation expenses for the fiscal year in which the debt is incurred or for a purpose for which a postdated warrant, installment contract, or lease-purchase agreement may be issued;
- (2) "Energy conservation measure" means any improvement, repair, alteration, or betterment of any new building design or any existing building or facility owned or operated by a school district or any equipment, fixture, or furnishing to be added to or used in any building or facility that is designed to reduce energy consumption or operating costs and may include, without limitation, one (1) or more of the following:
 - (A) Insulation of the building structure or systems within the building;
 - (B) Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (C) Automated or computerized energy control systems;
 - (D) Heating, ventilating, or air conditioning system modifications or replacements;
 - (E) Replacements or modifications of lighting fixtures to increase the energy efficiency of the lighting system;
 - (F) Indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements even in lieu of an increase in energy usage;
 - (G) Any additional building infrastructure improvements, cost savings, and life safety or other safety or conservation measures that provide long-term operating cost reductions and are in compliance with state and local codes; and
 - (H) Building operation programs that reduce operating costs;
- (3) "Nonrevenue receipts of a school district" means those receipts which either incur an obligation which must be met at some future date or which change the form of an asset from property to cash. Specifically, they consist of the proceeds of a bond sale, payment of losses on an insurance policy, the receipts from the sale of property, etc.; and
- (4) "Revenue receipts of a school district" means those receipts that do not result in increasing school indebtedness or in depleting school property. Specifically, revenue receipts of a school district for any fiscal year shall consist of the following funds:
 - (A) Net cash balance on hand at the beginning of the school fiscal year, July 1;
 - (B) The remaining net proceeds of local taxes collected in the calendar year in which the school fiscal year started plus forty percent (40%) of the proceeds of the local taxes which are not pledged to secure bonded indebtedness or forty percent (40%) of the revenue from the uniform rate of tax whichever is greater collected in the succeeding calendar year. This forty percent (40%) shall be determined by applying the following formula: The greater of the assessed valuation multiplied by the tax rate which is not pledged to secure bonded indebtedness multiplied by forty percent (40%) or the assessed valuation multiplied by the uniform rate of tax multiplied by forty percent (40%); and
 - (C) The net proceeds of all other funds accrued or placed to the credit of the district during the fiscal year from regular revenue sources, including, but not limited to, state and federal funding.

History. Acts 1939, No. 194, § 2; 1949, No. 150, § 1; 1958 (2nd Ex. Sess.), No. 3, § 1; A.S.A. 1947, § 80-1002; Acts 1989, No. 105, § 1; 1993, No. 314, § 1; 1997, No. 962, § 1; 1997, No. 1307, § 10; 2005, No. 2156, § 1.

6-20-402. Limitation on current indebtedness - Postdated warrants and installment contracts - Liability.

(a)(1)(A) The amount of obligations incurred by a school district for any school fiscal year shall not be in excess of the revenue receipts of the district for that year except as provided in this section and in § 6-20-801 et seq.

(B) A school district or charter school may enter into public-private partnerships whereby the school district or charter school enters into a lease-purchase agreement for the acquisition or construction of a school building or related facilities or acquired by the private entities with facilities bonds exempt from federal taxes under 26 U.S.C. § 142(a)(13), as in existence on January 1, 2003, or otherwise exempt under 26 U.S.C. § 103, as it existed on January 1, 2005.

(2) A school district 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 in which the insurance coverage extends three (3) years or longer;

(C)(i) Purchase of equipment.

(ii) However, "purchase of equipment" does not include separate equipment service agreements, equipment repair contracts, or extended warranties for the equipment;

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

(E) Construction, repair, and renovation of school facilities;

(F) Purchase of school sites;

(G) Payment on loans secured for settlement resulting from litigation against a school district;

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

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

(3) School districts may issue postdated warrants or enter into installment contracts or lease purchase agreements in an amount sufficient to accomplish the purposes listed in subdivision (a)(2) of this section and to pay the costs of issuing the postdated warrants or entering into the installment contracts or lease purchase agreements.

(b)(1)(A) Except as provided in subdivisions (b)(1)(B) and (C) of this section, a postdated warrant, a short-term lease-purchase agreement, or an installment contract must be paid within ten (10) of the date of issuance of the postdated warrant or the execution of the written lease-purchase agreement or installment contract, as the case may be.

(B)(i) A school district's acquisition of energy conservation measures under § 6-20-405 may be financed by the school district over a twenty-year period after the execution by

the school district of the postdated warrant, lease-purchase agreement, or installment contract.

(ii) However, no financing shall exceed the reasonably expected useful life of the energy facilities or equipment subject to the energy savings contract in favor of either a qualified provider or a third-party financing company designated by a qualified provider.

(C) A long-term lease agreement allowed under subdivision (a)(1)(B) of this section:

(i) Shall be paid within thirty (30) years of the date of the execution of the written lease-purchase agreement; and

(ii)(a) May contain a provision allowing the school district an option to terminate the agreement at the end of any fiscal year for the school district.

Any long-term lease containing an option to terminate at the end of a fiscal year shall not be included in the calculation of the debt ratio applicable to that school district.

(2) Any long-term lease allowed under subdivision (a)(1)(B) of this section that does not contain an option to terminate at the end of the fiscal year shall be included in the calculation of the debt ratio applicable to that school district.

(iii) All school buildings or related facilities shall comply with the requirements of the Arkansas School Facility Manual in effect at the time the lease became effective.

(D)(i) A school district may sublease a portion of a school building or facility whenever that building or facility is not being used for educational purposes.

(ii) Rent received from a sublease:

(a) Shall be deposited in the school district's general fund; and

(b) May be used for any operational or capital purpose.

(E) Postdated warrants, lease-purchase agreements, and installment contracts must be registered on forms provided or approved by the State Board of Education with the treasurer of the district and the board.

(2)(A) Each lease-purchase agreement and installment contract must have attached thereto a schedule of the rent or installments to be paid, showing:

(i) The payee and any assignee;

(ii) The school district;

(iii) The purpose of the purchase or payment;

(iv) The due date of each installment; and

(v) The amount of principal and interest of each installment and the fiscal year in which the installment is to be paid.

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

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

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

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

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

(6) All warrants issued or installment contracts and lease-purchase agreements entered into in excess of the revenue of a school district for a school fiscal year are null and void except as provided in this section.

(7) It shall be the duty of the school fiscal officer to indicate on each school district warrant or on the schedule of payments attached to a written installment contract or lease-purchase agreement the school year's revenues against which the obligation was incurred and is to be paid. It shall be unlawful for the school fiscal officer to issue a school district warrant or to enter into an installment contract or lease-purchase agreement the installments for which are to be charged against the revenues of a school year if the obligation thereof was incurred in a different school year except as otherwise authorized in this section.

(8) The school fiscal officer may comply with the provisions of this section by indicating on each warrant or schedule of payments attached to any installment contract or lease-purchase agreement the school year's revenues against which each payment is to be charged, or he or she may use a warrant of a distinct color for a particular year and shall advise the county treasurer, if the county treasurer serves as the school district treasurer, in writing of the color of warrant being used for credit against the revenues of a particular year.

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

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

(c)(1) A school district may refinance one (1) or more outstanding postdated warrants, lease-purchase agreements, or installment contracts and pay the usual, customary, and reasonable costs of the refinancing by issuing one (1) postdated warrant, lease-purchase agreement, or installment contract if the refinancing:

- (A)(i) Results in a net savings to the school district.
- (ii) A net savings results if the outstanding principal balance plus the remaining interest payments and any early call penalties is greater than the new principal balance plus the total interest to be paid and the cost of the refinancing of the outstanding postdated warrant, lease-purchase agreement, or installment contract;
- (B) Does not extend the term of the postdated warrant, lease-purchase agreement, or installment contract more than five (5) years beyond the term of the existing individual outstanding postdated warrants, lease-purchase agreements, or installment contracts, and if the original term together with any extension does not exceed ten (10) years;
- (C) Does not increase the outstanding debt owed by the school district under the existing outstanding postdated warrants, lease-purchase agreements, or installment contracts except to the extent necessary to cover usual, customary, and reasonable costs of issuance of the new refunding postdated warrant, lease-purchase agreement, or installment contract and except to the extent necessary for new financing as authorized by subsection (a) of this section;
- (D)(i) Except as allowed under subdivision (D)(ii) of this section, the outstanding postdated warrants, lease-purchase agreements, or installment contracts have not been previously refinanced.
- (ii) Any outstanding postdated warrants, lease-purchase agreements, or installment contracts may be refinanced more than one (1) time if:
- (a) The school district realizes a savings from the refinancing;
 - (b) The term of the debt obligation is not extended; and
 - (c) The refinancing does not increase the total debt obligation of the school district;
- and
- (E) The school district obtains the prior written approval of the department to refinance one (1) or more outstanding postdated warrants, lease-purchase agreements, or installment contracts.
- (2) The state board may promulgate rules and regulations as necessary to implement subdivision (c)(1) of this section.
- (d)(1) A school district may incur current indebtedness and issue its notes or other evidence thereof as provided in this subsection.
- (2) All current indebtedness incurred in a fiscal year shall mature on or before December 31 of the calendar year in which the fiscal year ends.
- (3) Current indebtedness is not included in the term "bonded indebtedness" and shall not be considered a part of the total debt of a district as limited by § 6-20-803.
- (4) Current indebtedness shall be payable from and may be secured by a pledge of all or any part of the revenue receipts of the issuing district for the fiscal year in which the debt is incurred.
- (5) The amount of obligations incurred by a school district for any school fiscal year, including current indebtedness, shall not be in excess of the revenue receipts of the district for that year except as expressly authorized in subsection (a) of this section.
- (e)(1)(A)(i) Except as provided in subdivision (e)(1)(B) of this section, as additional security for the payment of any postdated warrant, installment contract, lease-purchase agreement, or current indebtedness of a school district authorized under subdivision (a)(2) of this section, the district may authorize the state board to cure any delinquencies of the school district by withholding state foundation funding due the district.

(ii) Authorization shall be given by the school district at the time that the postdated warrant, installment contract, or lease-purchase agreement is issued or the current indebtedness authorized under subdivision (a)(2) of this section is incurred and shall be given in the manner and in the form that the state board shall prescribe.

(B) A school district may not authorize the state board to cure and the state board shall not cure any delinquencies of the district in contracts or extended warranties on equipment by withholding state foundation funding due the district.

(2)(A) If a school district has authorized withholding of its state foundation funding under subdivision (e)(1)(A) of this section and the school district has failed to pay the payee or paying agent amounts due under a postdated warrant, installment contract, or lease-purchase agreement described in subdivision (a)(2) of this section, the payee or paying agent shall be entitled to payment from the school district's withheld state foundation funding if the payee or paying agent:

(i) Obtains a final judgment establishing the payee's or paying agent's right to payment from the school district under a postdated warrant, installment contract, or lease-purchase agreement described in subdivision (a)(2) of this section; and

(ii) Submits a written request for payment of the amount of the unpaid judgment and a certified copy of the final judgment to the Commissioner of Education and the superintendent of the school district.

(B)(i) Except as provided in subdivision (e)(1)(B) of this section, unless the superintendent of the school district certifies in writing to the commissioner that payment has been made by the district to the payee or the paying agent and the judgment has been paid in full, the commissioner shall withhold from the next distribution to the school district of state foundation funding and remit to the payee or paying agent an amount sufficient to pay the judgment amount.

(ii) If the amount withheld under subdivision (e)(1)(B)(i) is insufficient to pay the judgment in full, the commissioner shall continue withholding subsequent distributions of state foundation funding to the school district until the superintendent certifies to the commissioner that the judgment is paid in full.

(3) In the event that the amount next due to be distributed to the delinquent district is not sufficient to cure the delinquency, the commissioner shall continue to withhold state aid as due and remit it to the payee or paying agent until the payment deficiency has been cured.

(4) If the commissioner is notified that a district is delinquent on two (2) or more obligations for which a district has authorized withholding of state aid to cure a delinquency, the commissioner shall make payment to payees or paying agents in the order of receipt of notices of the delinquencies.

(f) If the state board withholds state aid from a school district pursuant to subsection (e) of this section, the school district shall be classified as a Phase III school district in distress as described in § 6-20-1609 [repealed].

(g) Any duties required of any officer of the state pursuant to subsection (e) of this section shall be only ministerial in nature and shall in no way transfer any liability of the debtor to the state or any agency or any officer thereof.

(h) The rate of interest on postdated warrants, installment contracts, lease-purchase agreements, and current indebtedness shall not exceed the maximum interest rate for school bonds as determined under § 6-20-1206.

History. Acts 1939, No. 194, § 3; 1949, No. 150, § 2; 1969, No. 76, § 1; 1977, No. 494, § 1; 1981, No. 550, § 1; 1983, No. 438, § 1; 1985, No. 223, § 1; A.S.A. 1947, § 80-1003; Acts 1989, No. 105, §§ 2, 3; 1991, No. 401, § 15; 1993, No. 314, § 2; 1995, No. 233, § 11; 1997, No. 962, §§ 2, 3; 1997, No. 1265, § 1; 1997, No. 1329, § 2; 2001, No. 1220, §§ 8-10; 2003, No. 840, § 1; 2003, No. 1754, §§ 1, 2; 2003 (2nd Ex. Sess.), No. 58, §§ 1, 2; 2005, No. 1866, § 1; 2005, No. 2005, § 1; 2005, No. 2121, §§ 12, 23; 2005, No. 2156, § 2; 2005, No. 2177, § 1; 2006 (1st Ex. Sess.), No. 22, §§ 1-3; 2006 (1st Ex. Sess.), No. 23, §§ 1-3.

6-20-403. Authority to draw warrants - Countersignature.

The school district board of directors is authorized to draw warrants on the county treasurer when the county treasurer serves as treasurer of the school district for all funds to be disbursed by it, such warrants to be countersigned by the agent authorized under § 6-17-918, as countersignature is expressly required by law.

History. Acts 1931, No. 169, § 141; A.S.A. 1947, § 80-1004; Acts 1993, No. 294, § 13; 1995, No. 233, § 12; 1999, No. 1078, § 79.

6-20-404. Issuance of warrants to pay school bonds - Description of indebtedness.

- (a) All maturities of principal and interest of school bonds shall be paid by issuing warrants against the funds authorized by law for paying bonded indebtedness.
- (b) A description of the bonded debt which is being paid shall be written on the face of each warrant issued for this purpose. The description shall be as follows:
 - (1) Number and date of issue of each bond which is being paid; and
 - (2) Number and maturity date of each interest coupon and the number and date of each bond from which each interest coupon will be detached when paid.
- (c) Warrants issued for the purpose of paying school bonded indebtedness which do not carry the description of such indebtedness as named in subsection (b) of this section are void.
- (d) It shall be the duty of the county treasurer, or district treasurer if the school district has its own treasurer, to record in a book the description of the bonded indebtedness which is being paid by each warrant before he cashes it.
- (e) The county treasurer, or district treasurer if the school district has its own treasurer, and his bondsmen shall be liable for the amount of warrants cashed which were issued directly or indirectly in payment of principal or interest of school bonds which do not carry the description as required by this section and which were not recorded as required in subsection (d) of this section.

History. Acts 1937, No. 354, §§ 1-4; Pope's Dig., §§ 11651-11654; A.S.A. 1947, §§ 80-1009 - 80-1012; Acts 1995, No. 233, § 13.

6-20-405. Energy savings contract.

(a) As used in this section:

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

(B) The contract may provide that all payments except obligations on termination of the contract before its expiration are to be made over time and that the energy cost savings are guaranteed to the extent necessary to pay the costs of the energy conservation measures.

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

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

(E) If an energy savings contract is to be executed concurrently with one (1) or more conventional construction contracts for a common structure, the energy savings contract shall be separate and distinct from the other contract;

(2)(A) "Qualified provider" means a business that:

(i) Possesses a valid Arkansas contractor's license;

(ii) Has a minimum of five (5) years' experience in the analysis, design, implementation, and installation of energy efficiency and facility improvement measures;

(iii) Has the technical capabilities to ensure that the measures generate energy cost savings and the ability to provide maintenance and ongoing measurement of these measures to ensure and verify energy savings; and

(iv) Is preapproved by the Division of Public School Academic Facilities and Transportation.

(B) A qualified provider to whom the contract is awarded:

(i) Shall be required to provide a payment and performance bond to the school district for its faithful performance of the equipment installation; and

(ii) May be required to provide a letter of credit, surety bond, escrowed funds, or a corporate guarantee from a company with an investment grade credit rating in an amount necessary to

ensure the effective performance of the contract; and

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

(B)(i) Notice of the request for qualifications shall be published one (1) time each week for no fewer than two (2) consecutive weeks in a newspaper of statewide circulation.

(ii) Responses shall be sealed and opened in a public forum at a date within twenty (20) days from the last publication, at which point the district shall evaluate the qualifications.

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

(c)(1) A school district may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in any combination of energy costs or operational costs or future capital expenditures avoided within a twenty-year period from the date of installation if the recommendations in the proposal are followed.

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

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

(B) The qualifications of the provider;

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

(D) A statement from an Arkansas-licensed professional engineer that he or she was a member of the qualified provider's project team that completed a comprehensive energy audit and analysis of the school district's facilities; and

(E) The reasonably expected useful life of each recommended energy conservation measure.

(3)(A) Except as provided in subdivision (c)(3)(C) of this section, before entering into any energy savings contract, the contract shall be reviewed by an engineer who is:

(i) Licensed in the State of Arkansas; and

(ii) Designated by the division as qualified to review energy savings contracts.

(B)(i) The engineer conducting the contract review shall report to the district any comments

or issues that he or she believes merit consideration by the district before the district executes the energy savings contract.

(ii) The engineer shall bear no liability for any estimation of energy savings generated as part of a contract review under this subdivision (c)(3).

(C) Third-party review as provided in this subdivision (c)(3) shall not be required if the qualified provider demonstrates that the provider is a current member in good standing of the Energy Service Company category of the National Association of Energy Service Companies.

(d)(1) The qualified provider shall provide to the school district an annual reconciliation report of the guaranteed energy-use savings.

(2) The qualified provider shall reimburse the school district for any annual shortfall of guaranteed energy-use savings projected in the project.

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

History. Acts 1997, No. 962, § 4; 2001, No. 1717, § 1; 2003 (2nd Ex. Sess.), No. 58, § 3; 2005, No. 2156, § 3.