

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

SENATE BILL 482

5 By: Senator Salmon
6 By: Representative Jackson
7
8

For An Act To Be Entitled

9 AN ACT TO AMEND THE LOCAL GOVERNMENT CAPITAL
10 IMPROVEMENT REVENUE BOND ACT OF 1985 TO INCLUDE
11 PERFORMANCE-BASED EFFICIENCY PROJECTS; AND FOR
12 OTHER PURPOSES.
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Subtitle

15 AN ACT TO AMEND THE LOCAL GOVERNMENT
16 CAPITAL IMPROVEMENT REVENUE BOND ACT OF
17 1985 TO INCLUDE PERFORMANCE-BASED
18 EFFICIENCY PROJECTS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 14-164-402 is amended to read as follows:
25 14-164-402. Definitions.

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

27 (1) "Bonds" means revenue bonds issued pursuant to this
28 subchapter;

29 (2) "Capital improvements" means any of the following: City or
30 town halls, courthouses, and administrative, executive, or other public
31 offices; court facilities; jails; police and sheriff stations, vehicles,
32 apparatus, and facilities; firefighting facilities, vehicles, and apparatus;
33 public health facilities, vehicles, and apparatus; hospitals, nursing homes,
34 and similar extended-care facilities; facilities or vehicles for nonprofit
35 organizations engaged primarily in public health, health systems support,
36 safety, disaster relief, and related activities; residential housing for low



1 and moderate income, elderly, or individuals with disabilities and families;
 2 parking facilities and garages; educational and training facilities or
 3 vehicles for public employees; auditoriums; stadiums; convention, meeting, or
 4 entertainment facilities; ambulance and other emergency medical service
 5 facilities or vehicles; civil defense facilities or vehicles; air and water
 6 pollution control facilities; drainage and flood control facilities; storm
 7 sewers; arts and crafts centers; museums; libraries; public parks,
 8 playgrounds, or other public open space; marinas; swimming pools, tennis
 9 courts, golf courses, camping facilities, gymnasiums, and other recreational
 10 facilities; tourist information and assistance centers; historical, cultural,
 11 natural, or folklore sites; fair and exhibition facilities; streets and
 12 street lighting, alleys, sidewalks, roads, bridges, and viaducts; airports,
 13 passenger or freight terminals, hangars, and related facilities; barge
 14 terminals, ports, harbors, ferries, wharves, docks, and similar marine
 15 services; slack water harbors, water resource facilities, waterfront
 16 development facilities, and navigational facilities; public transportation
 17 facilities or vehicles; public water systems and related transmission and
 18 distribution facilities, storage facilities, wells, impounding reservoirs,
 19 treatment plants, lakes, dams, watercourses, and water rights; sewage
 20 collection systems and treatment plants; maintenance and storage buildings
 21 and facilities; incinerators; garbage and solid waste collection disposal,
 22 compacting, and recycling facilities or vehicles of every kind; gas and
 23 electric generation, transmission, and distribution systems, including
 24 without limiting the generality of the foregoing, hydroelectric generating
 25 facilities, dams, powerhouses, and related facilities; and social and
 26 rehabilitative service facilities;

27 (3) "Chief executive" means the mayor of a municipality or the
 28 county judge of a county;

29 (4) "Clerk" means the clerk or recorder of a municipality or
 30 county clerk of a county;

31 (5) "County" means any county in the State of Arkansas;

32 (6) "Efficiency savings" means the savings in operational cost
 33 realized by the issuer as a result of a performance-based efficiency project
 34 that are capable of being verified by comparing the applicable project's
 35 annual operational cost after the implementation, construction, and
 36 installation of the performance-based efficiency project with:

1 (A) The applicable project’s actual annual operational
 2 cost before the implementation, construction, and installation of the
 3 performance-based efficiency project; or

4 (B) In the case of a new performance-based efficiency
 5 project, the applicable project’s projected annual operational cost without
 6 the implementation, construction, and installation of the performance-based
 7 efficiency project;

8 ~~(6)~~(7) "Issuer" means a municipality or a county;

9 ~~(7)~~(8) "Legislative body" means the quorum court of a county or
 10 the council, board of directors, board of commissioners, or similar elected
 11 governing body of a city or town;

12 ~~(8)~~(9) "Municipality" means any city or incorporated town in the
 13 State of Arkansas;

14 (10) "Operational cost" means any expenditure by an issuer for
 15 the operation of a project, including, but not limited to, utility costs,
 16 maintenance costs, payments required for third-party services, service
 17 contracts, including, but not limited to, commodities purchase contracts,
 18 labor costs, equipment costs, and material costs;

19 ~~(9)~~(11) "Ordinance" means an ordinance, resolution, or other
 20 appropriate legislative enactment of a legislative body;

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

27 ~~(10)~~(13) "Project" means all, any combination, or any part of
 28 the capital improvements defined in subdivision (2) of this section;

29 ~~(11)~~(14) "Project revenues" means revenues derived from the
 30 capital improvements financed, in whole or in part, with the proceeds of
 31 bonds issued under this subchapter;

32 (15) "Qualified efficiency contract" means a written contract
 33 between an issuer and a qualified efficiency engineering company for the
 34 completion of a performance-based efficiency project that contains the
 35 following terms and conditions:

36 (A) The qualified efficiency engineering company shall

1 guarantee to the issuer in writing that the issuer will derive efficiency
2 savings from the performance-based efficiency project;

3 (B) The qualified efficiency engineering company shall
4 guarantee to the issuer the annual amount of efficiency savings to be derived
5 by the issuer from the performance-based efficiency project;

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

11 (D) The qualified efficiency engineering company shall
12 guarantee to the issuer the aggregate amount of efficiency savings to be
13 derived by the issuer from the performance-based efficiency project by
14 providing in favor of the issuer:

15 (i) A letter of credit issued by a federally insured
16 banking institution;

17 (ii) An amount of cash equal to the aggregate
18 projected efficiency savings to be placed in escrow with an independent
19 escrow agent;

20 (iii) A multi-year surety bond insuring the
21 aggregate amount of efficiency savings guaranteed by the qualified efficiency
22 engineering company that must remain in force throughout the term of any
23 revenue bonds issued under this subchapter to finance any costs and expenses
24 associated with the performance-based efficiency project;

25 (iv) If the qualified efficiency engineering company
26 has an investment grade credit rating as established in writing addressed to
27 the issuer by an independent third-party credit rating agency, a corporate
28 guarantee of the qualified efficiency engineering company; or

29 (v) Any combination of subdivisions (16)(D)(i) -
30 (iv) of this section;

31 (E) The qualified efficiency engineering company shall
32 utilize the International Performance Measurement and Verification Protocol
33 to measure and value the efficiency savings throughout the term of any
34 revenue bonds issued pursuant to this subchapter;

35 (F) The qualified efficiency engineering company shall
36 monitor and reconcile on at least an annual basis, in units of energy or

1 other appropriate basis depending on the type of operational cost compared,
 2 the actual energy savings derived by the issuer from the performance-based
 3 efficiency project with the projected energy savings guaranteed by the
 4 qualified efficiency engineering company;

5 (G) If the reconciliation required by subdivision (16)(F)
 6 of this section discloses that the issuer derived from the performance-based
 7 efficiency project actual energy savings in an amount less than the projected
 8 energy savings, the qualified efficiency engineering company shall pay to the
 9 issuer the difference between the projected energy savings and the actual
 10 energy savings; and

11 (H) Performance-based efficiency project plans and
 12 specifications must be prepared by the qualified efficiency engineering
 13 company for the issuer and shall bear the seal of the professional engineer
 14 who prepared the plans and specifications, and the professional engineer
 15 shall hold a valid professional engineer's license in good standing issued by
 16 the State Board of Registration for Professional Engineers and Land
 17 Surveyors;

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

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

22 (B) Develops, designs, installs, constructs, maintains,
 23 measures, monitors, and verifies the operation of a performance-based
 24 efficiency project, pursuant to a qualified efficiency contract with an
 25 issuer;

26 ~~(13)~~(17) "Revenue Bonds" means all bonds, notes, certificates or
 27 other instruments or evidences of indebtedness the repayment of which is
 28 secured by efficiency savings, user fees, charges or other revenues (other
 29 than assessments for local improvements and taxes):

30 ~~(i)~~(A) Derived from or occurring as a result of the
 31 performance-based efficiency project, or improvements financed in whole or in
 32 part by such bonds, notes, certificates or other instruments or evidences of
 33 indebtedness;

34 ~~(ii)~~(B) From the operations of any government unit; or

35 ~~(iii)~~(C) From any other special fund or source other than
 36 assessments for local improvements and taxes-; and

1 ~~(12)~~(18) "Revenues" means project revenues or any other special
 2 fund or source other than taxes or assessments for local improvements
 3 including, without limitation, any acquired with bond proceeds and the
 4 revenues to be derived from ~~them~~ any performance-based efficiency project or
 5 capital improvement, and any other user fees, charges or revenues derived
 6 from the operations of any municipality or county and any agency, board,
 7 commission, or instrumentality ~~thereof~~.

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 9 SECTION 2. Arkansas Code § 14-164-405 is amended to read as follows:
 10 14-164-405. Bonds - Issuance generally.

11 (a) Municipalities and counties are authorized to issue bonds for
 12 capital improvements and performance-based efficiency projects. These bonds
 13 shall be issued pursuant to an ordinance adopted by the legislative body
 14 specifying the principal amount of bonds to be issued, the purpose or
 15 purposes for which the bonds are to be issued, and provisions with respect to
 16 the bonds.

17 (b) If determined to be in the interest of the municipality or county,
 18 a portion of the bonds may be used to finance a project or a performance-
 19 based efficiency project, and expenses in connection with the issuance of the
 20 bonds and a major portion of the proceeds may be invested in consideration of
 21 a contract for the full term of the bonds or a shorter period at a rate or
 22 rates at least sufficient to provide for, alone or with other revenues that
 23 may be pledged, debt service for the bonds.

24
 25 SECTION 3. Arkansas Code § 14-164-418 is amended to read as follows:
 26 14-164-418. Refunding bonds.

27 (a) Bonds may be issued under this subchapter to refund any
 28 outstanding bonds issued pursuant to this subchapter or to refund any
 29 outstanding bonds, whether revenue bonds or not, issued pursuant to any other
 30 law for the purpose of financing capital improvements or a performance-based
 31 efficiency project.

32 (b)(1) The refunding bonds may be either sold for cash or delivered in
 33 exchange for the outstanding obligations.

34 (2) If sold for cash, the proceeds may be either applied to the
 35 payment of the obligations refunded or deposited in irrevocable trust for the
 36 retirement thereof either at maturity or on an authorized redemption date.

1 (c) Refunding bonds shall in all respects be authorized, issued, and
 2 secured in the manner provided in this subchapter.

3 (d) The ordinance under which the refunding bonds are issued may
 4 provide that any refunding bonds shall have the same priority of lien on
 5 revenues as originally pledged for payment of the obligation refunded
 6 thereby.

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 8 SECTION 4. Arkansas Code Title 14, Chapter 164, Subchapter 4 is
 9 amended to add an additional section to read as follows:

10 14-164-419. Contract requirements.

11 (a) All services provided by a qualified efficiency engineer in
 12 completing a performance-based efficiency project pursuant to a qualified
 13 efficiency contract, including, but not limited to, the procurement of any
 14 goods and services in connection with the performance-based efficiency
 15 project, shall be considered professional services under §§ 19-11-801 – 19-
 16 11-806.

17 (b) An issuer’s engagement of a qualified efficiency engineering
 18 company and execution of a qualified efficiency contract in favor of a
 19 qualified efficiency engineering company shall be subject to §§ 19-11-801 –
 20 19-11-806, but shall be exempt from all competitive bidding statutes,
 21 including, but not limited to, §§ 14-43-601 – 14-43-611, 14-47-101 – 14-47-
 22 139, 14-48-101 – 14-48-131, 14-54-301 – 14-54-304, 14-54-401 – 14-54-404, 14-
 23 58-301 – 14-58-309, 14-141-110 – 14-141-113, 19-4-101 – 19-4-2202, 19-11-101
 24 – 19-11-1102, 22-1-201 – 22-9-702, 14-16-101 – 14-16-116, 14-19-101 – 14-19-
 25 111, and 14-22-101 – 14-22-115.

26
 27 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
 28 General Assembly of the State of Arkansas that there is currently an energy
 29 crisis that threatens the economy of the State of Arkansas; that this poses
 30 an immediate and future peril to the health, safety, and welfare of its
 31 people; that the energy crisis is due to many factors, including, but not
 32 limited to, inefficiencies in the production of energy within the State of
 33 Arkansas, the decline in supplies of petroleum, natural gas, and other energy
 34 sources, increases in population, and the demand for natural resources; that
 35 the energy crisis will be perpetuated by a continued dependence on depletable
 36 energy resources that are subject to rapid increases in price and uncertain

1 availability and by the wasteful and inefficient use of available energy
 2 supplies; that the energy crisis has adversely affected the growth and
 3 stability of agriculture, commerce, and industry within the State of
 4 Arkansas; that it is the responsibility of the State of Arkansas to encourage
 5 energy conservation and efficiency in order to alleviate the undesirable
 6 social and economic conditions created by the energy crisis; that the
 7 availability of financing for energy efficient facilities on favorable terms
 8 is necessary; and that this act is immediately necessary so facilities may be
 9 financed, projects accomplished, and the resulting public benefits realized.
 10 Therefore, an emergency is declared to exist and this act being immediately
 11 necessary for the preservation of the public peace, health, and safety shall
 12 become effective on:

- 13 (1) The date of its approval by the Governor;
- 14 (2) If the bill is neither approved nor vetoed by the Governor,
 15 the expiration of the period of time during which the Governor may veto the
 16 bill; or
- 17 (3) If the bill is vetoed by the Governor and the veto is
 18 overridden, the date the last house overrides the veto.

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