

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

As Engrossed: S2/28/05

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.
13
14

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.
19
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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, apparatus, and
32 facilities; firefighting facilities and apparatus; public health facilities
33 and apparatus; hospitals, nursing homes, and similar extended-care
34 facilities; facilities for nonprofit organizations engaged primarily in
35 public health, health systems support, safety, disaster relief, and related
36 activities; residential housing for low and moderate income, elderly, or



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

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

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

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

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

36 (A) The applicable project's actual annual operational

1 cost before the implementation, construction, and installation of the
2 performance-based efficiency project; or

3 (B) In the case of a new performance-based efficiency
4 project, the applicable project's projected annual operational cost without
5 the implementation, construction, and installation of the performance-based
6 efficiency project as determined by a licensed professional engineer not
7 affiliated or associated with the qualified efficiency engineering company;

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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20 */s/ Salmon*

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