

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 *As Engrossed: S2/28/05 H3/11/05 3/30/05*

2 85th General Assembly

# A Bill

3 Regular Session, 2005

SENATE BILL 482

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5 By: Senator Salmon

6 By: Representative Jackson

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## For An Act To Be Entitled

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AN ACT TO AMEND THE LOCAL GOVERNMENT CAPITAL

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IMPROVEMENT REVENUE BOND ACT OF 1985 TO INCLUDE

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PERFORMANCE-BASED EFFICIENCY PROJECTS; AND FOR

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OTHER PURPOSES.

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## Subtitle

16

AN ACT TO AMEND THE LOCAL GOVERNMENT

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CAPITAL IMPROVEMENT REVENUE BOND ACT OF

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1985 TO INCLUDE PERFORMANCE-BASED

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EFFICIENCY PROJECTS.

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

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SECTION 1. Arkansas Code § 14-164-402 is amended to read as follows:

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14-164-402. Definitions.

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

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(1) "Bonds" means revenue bonds issued pursuant to this

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subchapter;

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(2) "Capital improvements" means any of the following: City or

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town halls, courthouses, and administrative, executive, or other public

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offices; court facilities; jails; police and sheriff stations, apparatus, and

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facilities; firefighting facilities and apparatus; public health facilities

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and apparatus; hospitals, nursing homes, and similar extended-care

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facilities; facilities for nonprofit organizations engaged primarily in

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public health, health systems support, safety, disaster relief, and related

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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;

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; and

18 (I) The qualified efficiency engineer shall provide in favor of  
19 the issuer a payment and performance bond insuring the qualified efficiency  
20 engineering company's faithful performance of the installation and  
21 construction required under the qualified efficiency contract.

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

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

26 (B) Develops, designs, installs, constructs, maintains,  
27 measures, monitors, and verifies the operation of a performance-based  
28 efficiency project, pursuant to a qualified efficiency contract with an  
29 issuer;

30 ~~(13)~~(17) "Revenue Bonds" means all bonds, notes, certificates or  
31 other instruments or evidences of indebtedness the repayment of which is  
32 secured by user fees, charges or other revenues (other than assessments for  
33 local improvements and taxes):

34 ~~(i)~~(A) Derived from the project, or improvements financed  
35 in whole or in part by such bonds, notes, certificates or other instruments  
36 or evidences of indebtedness;

1                   ~~(ii)~~(B) From the operations of any government unit; or  
 2                   ~~(iii)~~(C) From any other special fund or source other than  
 3 assessments for local improvements and taxes; and

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

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 11           SECTION 2. Arkansas Code § 14-164-405 is amended to read as follows:  
 12           14-164-405. Bonds - Issuance generally.

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

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

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 27           SECTION 3. Arkansas Code § 14-164-418 is amended to read as follows:  
 28           14-164-418. Refunding bonds.

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

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

36           (2) If sold for cash, the proceeds may be either applied to the

1 payment of the obligations refunded or deposited in irrevocable trust for the  
2 retirement thereof either at maturity or on an authorized redemption date.

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

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

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

12 14-164-419. Contract requirements.

13 (a) All services provided by a qualified efficiency engineer in  
14 completing a performance-based efficiency project pursuant to a qualified  
15 efficiency contract, including, but not limited to, the procurement of any  
16 goods and services in connection with the performance-based efficiency  
17 project, shall be considered professional services under §§ 19-11-801 – 19-  
18 11-806.

19 (b) An issuer's engagement of a qualified efficiency engineering  
20 company and execution of a qualified efficiency contract in favor of a  
21 qualified efficiency engineering company shall be subject to §§ 19-11-801 –  
22 19-11-806, but shall be exempt from all competitive bidding statutes,  
23 including, but not limited to, §§ 14-43-601 – 14-43-611, 14-47-101 – 14-47-  
24 139, 14-48-101 – 14-48-131, 14-54-301 – 14-54-304, 14-54-401 – 14-54-404, 14-  
25 58-301 – 14-58-309, 14-141-110 – 14-141-113, 19-4-101 – 19-4-2202, 19-11-101  
26 – 19-11-1102, 22-1-201 – 22-9-702, 14-16-101 – 14-16-116, 14-19-101 – 14-19-  
27 111, and 14-22-101 – 14-22-115.

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

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

15 (1) The date of its approval by the Governor;

16 (2) If the bill is neither approved nor vetoed by the Governor,  
17 the expiration of the period of time during which the Governor may veto the  
18 bill; or

19 (3) If the bill is vetoed by the Governor and the veto is  
20 overridden, the date the last house overrides the veto.

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22 */s/ Salmon*  
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