State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

SENATE BILL 584

By: Senator Broadway
By: Representative Webb

For An Act To Be Entitled

AN ACT TO AUTHORIZE THE ISSUANCE OF STATE OF ARKANSAS ENERGY COST SAVINGS PROJECTS GENERAL OBLIGATION BONDS BY THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY IN A TOTAL PRINCIPAL AMOUNT NOT TO EXCEED THREE HUNDRED MILLION DOLLARS ($300,000,000), IN ONE OR MORE SERIES FROM TIME TO TIME, FOR THE PURPOSE OF FINANCING GUARANTEED ENERGY COST SAVINGS PROJECTS FOR STATE AGENCIES; TO SUBMIT THE QUESTION OF ISSUANCE OF THE BONDS TO A STATEWIDE ELECTION; AND FOR OTHER PURPOSES.

Subtitle

THE ENERGY COST SAVINGS PROJECTS FINANCING ACT OF 2009.

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

<u>Section 1. Arkansas Code Title 15, Chapter 5 is amended to add an additional subchapter to read as follows:</u>

<u>15-5-1701. Title.</u>

<u>This subchapter shall be known and may be cited as the “Energy Cost Savings Projects Financing Act of 2009”.</u>

<u>15-5-1702. Legislative intent.</u>

<u>The General Assembly finds:</u>

<u>(1) There is an immediate need for improvements to reduce the</u>

consumption of energy and natural resources in buildings that house state agencies;

(2) A reduction in the consumption of energy and natural resources by state agencies will produce cost savings and greater efficiency;

(3) A reduction in the consumption of energy and natural resources by state agencies will produce economic and environmental benefits for the citizens of this state and will set a good example for other government agencies and the private sector;

(4) Bonds issued under this subchapter will assist the state to reduce its consumption of energy and natural resources and will supplement those efforts of state agencies promoted under the Guaranteed Energy Cost Savings Act, § 19-11-1201 et seq.; and

(5) Even though the bonds issued under this subchapter are to be repaid from the savings to state agencies and assured by guaranteed energy cost savings contracts, those bonds shall also be guaranteed by the full faith and credit of this state.

15-5-1703. Definitions.

As used in this subchapter:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Bonds" means the State of Arkansas Energy Cost Savings Projects General Obligation Bonds authorized by this subchapter;

(3)(A) "Debt service" means, with respect to the bonds in any fiscal year, any amount required for the payment of:

(i) Principal;

(ii) Interest; and

(iii) Premium.

(B) "Debt service" includes:

(i) The fee or cost of a paying agent or trustee or a remarketing agent;

(ii) The cost of credit enhancement;

(iii) An administrative fee, including the fee of the authority; and

(iv) Any other amount necessary for the issuance of the bonds;

(4) "Designated revenues" means:

(A) An amount received by the authority under a loan agreement with a state agency; and

(B) A reimbursement to a state agency by a qualified provider of a guaranteed savings under § 19-11-1206;

(5) "Energy cost savings measure" has the same meaning as in § 19-11-1202;

(6) "Guaranteed energy cost savings contract" has the same meaning as in § 19-11-1202;

(7) "Loan agreement" means any loan agreement between the authority and a state agency as described in § 15-5-1714;

(8) "Project cost" means all or a part of:

(A) The cost of constructing, installing, or acquiring an energy cost savings measure;

(B) The administrative cost of a state agency, including the authority, incurred in connection with developing and implementing an energy cost savings measure; and

(C) Any cost incidental or appropriate to the financing of an energy cost savings measure, including without limitation:

(i) Capitalized interest;

(ii) The cost of the issuance of bonds and an appropriate reserve for the bonds;

(iii) A loan or commitment fee;

(iv) A loan or grant administration fee; and

(v) The cost for any engineering, legal, or administrative and consultant service;

(9) "Qualified provider" has the same meaning as in § 19-11-1202; and

(10) "State agency" has the same meaning as in § 19-11-203.

15-5-1704. Authority to issue bonds.

(a)(1) Subject to the approval of the voters in a statewide election, the authority may issue bonds of the State of Arkansas, to be known as "State of Arkansas Energy Cost Savings Projects General Obligation Bonds", in a total principal amount not to exceed three hundred million dollars ($300,000,000) for the purposes of this subchapter.

(2) The bonds may be issued from time to time in one (1) or more series as required under this subchapter.

(3)(A) Unless the General Assembly authorizes a greater principal amount to be issued during a fiscal year, the total principal amount of bonds to be issued during any fiscal year shall not exceed sixty million dollars ($60,000,000).

(B) However, if less than sixty million dollars ($60,000,000) in bonds is issued in any fiscal year, the difference between the amount of bonds actually issued and sixty million dollars ($60,000,000) shall be carried forward and added to the amount that may be issued in succeeding years.

(b)(1) A state agency may submit a proposal for a financing guaranteed energy cost savings contract to the State Procurement Director of the Office of State Procurement of the Department of Finance and Administration.

(2)(A) The director shall adopt rules establishing a process for receiving, reviewing, and approving a state agency proposal to finance a guaranteed energy cost savings contract.

(B) The rules shall include a process based on a first-come, first-served concept and contain provisions for dealing with multiple requests that exceed the limits on bond issuance in a fiscal year.

(c)(1) Before any bonds may be issued during a fiscal year, the authority and the director shall submit to the Governor a written plan:

(A) Requesting authorization for the projected maximum principal amount of bonds required to be issued in the fiscal year; and

(B) Describing the anticipated annual savings that will result from the guaranteed energy savings contracts to be financed.

(2) After receiving the written plan, the Governor shall confer with the Chief Fiscal Officer of the State and determine whether the annual amount of general revenue funds that would be required to be set aside from the general revenues of the state to pay the debt service requirements of the bonds during the fiscal year that the bonds would be issued will create an undue hardship on a state agency or state program supported by the general revenues.

(3) If the Governor considers it to be in the public interest to approve the issuance of the bonds, he or she shall authorize the authority by proclamation to proceed with the issuance of the bonds in one (1) or more

series up to the maximum principal amount for a fiscal year.

(4)(A) If the Governor refuses to give his or her approval for the issuance of the bonds, he or she shall promptly notify the authority in writing.

(B) The authority and the director may resubmit a previously rejected request to the Governor for his or her reconsideration under this section.

15-5-1705. Purpose of bonds.

Bonds issued under this subchapter shall be issued to finance or refinance temporarily or permanently energy cost savings measures under a guaranteed energy cost savings contract between a state agency and a qualified provider.

15-5-1706. Terms and characteristics of bonds.

(a) The bonds shall be issued in series in amounts sufficient to finance or refinance all or a part of project costs with the respective series to be designated in alphabetical order or by the year in which issued, or both.

(b) Each series of bonds shall have the date set by the authority and shall mature or be subject to the mandatory sinking fund redemption set by the Authority for a period that shall not exceed twenty (20) years from the date of issuance of the bonds of each series.

(c)(1) Each series of bonds shall bear interest, whether or not subject to federal income taxation, at the rate or rates accepted by the authority.

(2) Interest shall be payable at those times designated by the authority.

(d) The authority shall determine:

(1) The form of the bonds;

(2) The denomination of the bonds;

(3) Whether the bonds may be exchanged for bonds of another form or denomination bearing the same rate of interest and date of maturity;

(4) Whether the bonds may be payable within or without the state;

(5) Whether the bonds may be subject to redemption before

maturity, including:

(A) The manner of redemption; and

(B) The redemption price; and

(6) Any other terms and conditions of the bonds.

(e) The bonds shall have all the qualities of negotiable instruments or securities under the law of this state, subject to the provision for registration of ownership.

15-5-1707. Resolutions and trust indentures.

(a)(1) The authority shall authorize the bonds by a resolution that contains the terms, covenants, and conditions for the bonds, including without limitation conditions for:

(A) The establishment and maintenance of funds and accounts;

(B) The deposit and investment of revenues and bond proceeds; and

(C) The rights and obligations of the state, its officers and officials, the authority, and the registered owners of the bonds.

(2) The resolution of the authority may provide for the execution and delivery of one (1) or more trust indentures with one (1) or more banks or trust companies located within or without the state that contain the terms, covenants, and conditions required under subdivision (a)(1) of this section.

(3) A trust indenture is binding on the state and its agencies, officers, and officials to the extent provided in this subchapter.

(b) Any resolution or trust indenture adopted or executed under this section shall reserve the right to:

(1) Apply all or a part of the revenue that may be derived from a loan agreement between the authority and the state agency financing a guaranteed energy cost savings contract to the payment of debt service on the bonds; and

(2) Release from any requirement of the resolution or trust indenture other revenues and resources of the state, including without limitation those general revenues of the state required to be transferred under § 15-5-1711, to the extent the authority applies designated revenues to the payment of debt service.

15-5-1708. Form of bond — Signatures.

(a) Each bond shall:

(1) Be signed with the manual or facsimile signature of the Governor, the Chair of the Authority, and the Treasurer of State; and

(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.

(b) After the bonds have been executed under subsection (a) of this section, the delivery of the bonds and coupons is valid notwithstanding any change among the officials described in subdivision (a)(1) of this section.

15-5-1709. Sale of bonds.

(a) The authority may sell the bonds at:

(1)(A) A private or public sale.

(B) However, if the bonds are sold at public sale, the authority shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that the offering is being made; and

(C) The authority shall set the terms and conditions of bidding and the basis on which the winning bid will be selected;

(2) A price that may include a discount or a premium; and

(3) On such terms as the authority determines reasonable and expedient for effecting the purposes of this subchapter.

(b) The authority may structure the sale of bonds utilizing financing techniques recommended by professional advisors to:

(1) Take advantage of market conditions; and

(2) Obtain the most favorable interest rates consistent with the purpose of this subchapter.

(d) The authority may enter into ancillary agreements in connection with the sale of the bonds, including without limitation a:

(1) Bond purchase agreement;

(2) Remarketing agreement;

(3) Letter of credit; or

(4) Reimbursement agreement.

15-5-1710. Employment of professionals.

(a) The authority may:

(1) Retain any professional necessary to issue and sell the bonds, including without limitation legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents; and

(2) Pay its professionals reasonable compensation from the proceeds of the bonds or any amount received under a loan agreement with a state agency.

(b) The authority may pay from the proceeds of the bonds or from any amount received under a loan agreement with a state agency:

(1) The fee of any trustee, paying agent, or rating agency,

(2) The cost of publishing notices;

(3) The cost of printing the bonds, official statements, and other documents relating to the sale of the bonds; and

(4) Any other reasonable cost for issuing and selling the bonds.

(c)(1) The authority may charge an annual fee that shall not exceed one-eighth of one percent (0.125%) of the principal amount of the bonds outstanding as an administrative fee.

(2) The fee may be paid from the proceeds of the bonds or from amounts received under loan agreements with state agencies.

15-5-1711. Sources of repayment.

(a) The bonds are

(1) The general obligations of the state; and

(2) Secured and payable from the designated revenues and the general revenues of the state.

(b) The bonds shall be payable first from these designated revenues:

(1) Any amount received by the authority under a loan agreement with a state agency; and

(2) Any reimbursement to a state agency by a qualified provider of guaranteed energy cost savings.

(c) If the amount of designated revenues is insufficient to make timely payment of debt service on the bonds, the debt service payment shall be made from the general revenues of the state.

(d)(1) To secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of loan payments and other designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds.

(2) The payment of loan payments and other designated revenues under subdivision (d)(1) of this section does not have to be deposited into the State Treasury.

15-5-1712. Full faith and credit of state pledged.

(a)(1) The bonds shall be the direct general obligations of the state for the payment of debt service on which the full faith and credit of the state is irrevocably pledged so long as the bonds are outstanding.

(2)(A) The bonds shall be payable from the general revenues of the state.

(B) The state pledges the amount of general revenues of the state that is necessary for the payment of debt service on the bonds.

(b)(1) The obligation to pay debt service from the general revenues of the state under subdivision (a)(2)(B) of this section constitutes a first charge against the general revenues of the state that has priority over all other uses to which the general revenues of the state are devoted.

(2) To the extent other general obligation bonds of the state have been issued or subsequently may be issued, all general obligation bonds shall rank on a parity of security with respect to payment from general revenues of the state.

(c) Moneys that are above the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of a reserve fund, if any, and held under the resolution or indenture authorizing and securing the bonds may be used for the redemption of bonds before maturity if the resolution or trust indenture authorizing or securing the bonds provides for redemption before maturity.

15-5-1713. Investment of proceeds.

(a) The designated revenues and the proceeds of bonds held under a resolution or trust indenture that are pending expenditure on project costs or on debt service shall be invested by the authority to the full extent practicable.

(b) Notwithstanding any other provision of law, an investment under subsection (a) of this section shall comply with the applicable terms, if any, of the resolution or trust indenture authorizing or securing the series of bonds to which the designated revenues or bond proceeds pertain.

15-5-1714. Loan agreements with state agencies.

(a) The authority and the various state agencies are authorized to enter into a loan agreement under which:

(1) The authority shall fund initial project costs from the proceeds of bonds; and

(2) The state agency agrees to make loan payments in an amount equal to the debt service on the bonds issued to finance that state agency's energy cost savings measure.

(b) The loan agreement may require:

(1) The loan agreement to be pledged or assigned to the trustee or paying agent for the bonds to secure the bonds;

(2) The state agency to pay to the authority any amount received as reimbursement from a qualified provider; and

(3) Any other provision the authority considers reasonable and expedient to carry out the purpose of this subchapter.

15-5-1715. Bonds exempt from state, county, and municipal taxes.

(a) Bonds and the interest on the bonds issued under this subchapter are exempt from state, county, and municipal taxes, including income taxes, inheritance taxes, and property taxes.

(b) The bonds are:

(1) Eligible to secure a deposit of public funds; and

(2) A legal investment of a bank fund, a fiduciary fund, an insurance company fund, a trust fund, and a public fund.

15-5-1716. Refunding bonds.

(a)(1) Bonds may be issued to refund any outstanding bonds issued under this subchapter.

(2) Refunding bonds issued under this section are not subject to any of the requirements under § 15-5-1704(b) and (c).

(b) The refunding bonds may be:

(1)(A) Sold for cash.

(B) If sold for cash, the proceeds may be:

(i) Applied to the payment of the obligations refunded; or

(ii) Deposited in an irrevocable trust for the retirement of the outstanding obligations either at maturity or on an authorized redemption date; or

(2) Delivered in exchange for the outstanding obligations.

(c)(1) Except as provided in subdivision (a)(2) of this section, refunding bonds shall be authorized, issued, and secured the same as the bonds that are refunded.

(2) To the extent that the refunding bonds are not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds is not subject to the limits set in § 15-5-1704(a).

(d) The resolution or trust indenture under which the refunding bonds are issued shall provide that a refunding bond shall have the same priority of payment as the obligation refunded.

15-5-1717. No impairment of bond obligations.

(a) This subchapter constitutes a contract between the state and the registered owner of a bond issued under this subchapter.

(b)(1) The contract under subsection (a) of this section shall not be impaired by the state.

(2) Any violation of the terms of the contract under subsection (a) of this section shall be enjoined by a court of competent jurisdiction in an action brought by a bondholder or a taxpayer.

(c) In an action against the authority, the Treasurer of State, or other appropriate agency, officer, or official of the state, the court shall:

(1) Prevent a diversion of any revenues pledged under this subchapter; and

(2) Compel the restoration of any diverted revenue by injunction or mandamus.

(d) Without limiting any other remedy at law or in equity, a bondholder may compel the performance of any covenant or obligation of the state, its officers, and officials under this subchapter.

15-5-1718. No obligation until bonds issued.

This subchapter does not create any right of any character until the first series of bonds authorized by this subchapter is sold and delivered.

15-5-1719. Election.

(a)(1) Unless the Governor calls a special election before the next general election, the authority shall not issue bonds under this subchapter without the consent of a majority of the qualified electors of the state voting on the question in substantially the form described in subsection (b) of this section at the next general election.

(2) If the question is presented at the next general election:

(A) The Secretary of State shall:

(i) Publish notice of the question one (1) time in a newspaper of general circulation at least sixty (60) days before the general election; and

(ii) Mail notice of the question at least sixty (60) days before the general election to each county board of election commissioners and each county sheriff.

(3) If a special election is called by the Governor, he or she:

(A) Shall proclaim the special election at least sixty (60) days before the date set by the proclamation for the special election;

(B) Give notice of the special election by publishing the proclamation one (1) time in a newspaper of general circulation at least thirty (30) days before the date of the special election; and

(C) Mail notice of the special election to each county board of election commissioners and each county sheriff at least thirty (30) days before the date of the special election.

(b) The notice or proclamation for the election shall state that it is issued to submit to the people substantially the following question:

"Shall the Arkansas Development Finance Authority be authorized to issue general obligation bonds under the authority of the Energy Cost Savings Project Financing Act of 2009, for the financing and refinancing of energy cost savings projects at state agencies to serve the citizens of the State of Arkansas, in total principal amount not to exceed three hundred million dollars ($300,000,000), which bonds shall be repaid from energy cost savings recognized by state agencies pursuant to guaranteed energy cost savings contracts and further secured by a pledge of the full faith and credit of the

State of Arkansas?"

(c) Whether the question is presented at a special election or at the next general election:

(1) The title of this subchapter as set forth in § 15-5-1701 shall be the ballot title; and

(2) The proposition as stated in subsection (b) of this section and the following shall be printed on the ballot:

"FOR Issuance of State of Arkansas Energy Cost Savings Projects General Obligation Bonds in a total principal amount not to exceed three hundred million dollars ($300,000,000) _____

AGAINST Issuance of State of Arkansas Energy Cost Savings Projects General Obligation Bonds in a total principal amount not to exceed three hundred million dollars ($300,000,000) _____"

(d)(1) Each county board of election commissioners of this state shall:

(A) Conduct the election;

(B) Canvass the vote and declare the result; and

(C) Certify the results of the vote within ten (10) days after the date of the election to the Secretary of State.

(2) The Secretary of State shall:

(A) Tabulate all returns received by him or her; and

(B) Certify the total vote for and against the proposition submitted under this section.

15-5-1720. Effect of election.

(a) If the Secretary of State certifies that a majority of the qualified electors voting on the question voted for the issuance of the bonds, the Authority shall proceed with the sale and the issuance of the bonds as provided in this subchapter.

(b) If the Secretary of State certifies that a majority of the qualified electors voting on the question voted against the issuance of the bonds, the bonds authorized by this subchapter shall not be sold or issued.

(c) If a proposition fails, the Governor shall not call for a subsequent election under § 15-1-1719 to be held earlier than six (6) months after the date of the preceding election.

15-5-1721. Construction of subchapter.

This subchapter shall:

(1) Be liberally construed to accomplish its purposes;

(2)(A) Constitute the sole authority necessary to accomplish the purpose of this subchapter.

(B) Any other state law pertaining to the development of public facilities and properties and the financing is inapplicable; and

(3) Be interpreted to supplement existing laws that confer rights and powers on the authority.