

1 State of Arkansas
2 89th General Assembly
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4

A Bill

SENATE BILL 824

5 By: Senator D. Johnson
6 By: Representative Williams
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE ENABLING LEGISLATION FOR AMENDMENT
10 89 TO THE ARKANSAS CONSTITUTION RELATING TO ENERGY
11 EFFICIENCY BONDS AUTHORIZED BY STATE ENTITIES; TO
12 PROVIDE FOR THE AUTHORIZATION AND ISSUANCE OF BONDS
13 FOR ENERGY EFFICIENCY PROJECTS; TO ALLOW THE ARKANSAS
14 DEVELOPMENT FINANCE AUTHORITY TO ISSUE BONDS AT THE
15 REQUEST OF A STATE ENTITY FOR ENERGY EFFICIENCY
16 PROJECTS; TO REGULATE ENERGY EFFICIENCY PROJECT
17 BONDS; TO ALLOW STATE ENTITIES TO ENTER INTO
18 GUARANTEED ENERGY SAVINGS CONTRACTS; AND FOR OTHER
19 PURPOSES.
20

Subtitle

21
22 TO PROVIDE ENABLING LEGISLATION FOR
23 AMENDMENT 89 TO THE ARKANSAS CONSTITUTION
24 RELATING TO ENERGY EFFICIENCY BONDS
25 AUTHORIZED BY STATE ENTITIES.
26
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code Title 15, Chapter 5, is amended to add an
32 additional subchapter to read as follows:

Subchapter 18 –

State Entity Energy Efficiency Project Bond Act

34
35
36 15-5-1801. Title.



1 This subchapter shall be known as the “State Entity Energy Efficiency
2 Project Bond Act”.

3
4 15-5-1802. Purpose.

5 (a) The purpose of this subchapter is to provide financing for energy
6 efficiency projects for state entities under Amendment 89 to the Arkansas
7 Constitution.

8 (b) It is found and determined that:

9 (1) This subchapter is in furtherance of a public purpose; and

10 (2) The duties imposed upon the state entities and the Arkansas
11 Development Finance Authority in this subchapter are in furtherance of the
12 conservation of the environment, efficient government spending, and the
13 protection of the public health, welfare, and safety.

14
15 15-5-1803. Definitions.

16 As used in this subchapter:

17 (1) “Bonds” means all bonds, notes, certificates, financing
18 leases, or other interest-bearing instruments or evidences of indebtedness
19 that are issued under this subchapter;

20 (2) “Energy efficiency project” means an improvement, repair,
21 alteration, or renovation of a new building design or an existing building or
22 facility owned or operated by a state entity or any equipment, fixture, or
23 furnishing to be added to or used in a building or facility owned or operated
24 by a state entity that is designed to reduce energy consumption or operating
25 costs and may include without limitation one (1) or more of the following:

26 (A) Insulation of the building structure or systems
27 within the building;

28 (B) Storm windows or doors, caulking or weather
29 stripping, multiglazed windows or doors, heat-absorbing or heat-reflective
30 glazed and coated window or door systems, additional glazing, reductions in
31 glass area, or other window and door system modifications that reduce energy
32 consumption;

33 (C) Automated or computerized energy control
34 systems;

35 (D) Heating, ventilating, or air conditioning system
36 modifications or replacements;

1 (E) Replacements or modifications of lighting
 2 fixtures to increase the energy efficiency of a lighting system;

3 (F) Any additional building infrastructure
 4 improvements, cost savings, and life-safety or other safety or conservation
 5 measures that provide long-term operating cost reductions and that are in
 6 compliance with state and local codes; and

7 (G) Building operation programs that reduce
 8 operating costs;

9 (3) "Guaranteed energy savings contract" means a contract for
 10 the implementation of one (1) or more energy efficiency projects that:

11 (A) Includes a preinstallation energy audit and analysis;
 12 and

13 (B) Meets the requirements of § 15-5-1806;

14 (4) "Qualified provider" means a business that:

15 (A) Is licensed by the Contractors Licensing Board under
 16 §§ 17-25-301 – 17-25-316;

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

20 (C) Has the technical and financial capabilities to ensure
 21 that the measures generate energy cost savings;

22 (D) Has the ability to provide maintenance and ongoing
 23 measurement of the energy-efficiency and facility-improvement measures to
 24 ensure and verify energy savings; and

25 (E) Is preapproved by the state entity and the Arkansas
 26 Development Finance Authority; and

27 (5) "State entity" means:

28 (A) The state; and

29 (B) An agency, board, commission, or instrumentality of
 30 the state.

31
 32 15-5-1804. Issuance of bonds.

33 (a) Upon the request of a state entity, the Arkansas Development
 34 Finance Authority may issue bonds for the purpose of:

35 (1) Providing financing or refinancing for an energy efficiency
 36 project;

1 (2) Refunding bonds issued under this subchapter; and

2 (3) Paying the costs of issuing the bonds.

3 (b)(1) The bonds may be:

4 (A) Secured by a pledge of the savings derived from the
5 energy efficiency project; and

6 (B) Paid from general revenues, special revenues, revenues
7 derived from taxes, or any other revenues available to the state entity.

8 (2) A state entity may pledge or assign any guaranteed energy
9 savings contract to secure the bonds.

10 (3) A state entity may enter into a long-term loan agreement
11 with the authority to secure the bonds.

12 (c)(1)(A) Bonds issued under this subchapter shall:

13 (i) Be authorized by a resolution of the state
14 entity and the Board of Directors of the Arkansas Development Finance
15 Authority; and

16 (ii) Have the form and characteristics and bear the
17 designations provided in the resolution and permitted under this chapter,
18 including without limitation §§ 15-5-301 – 15-5-317.

19 (B) The resolution under subdivision (c)(1)(A)(i) of this
20 section may include the provisions and covenants that the state entity or the
21 board determines to be necessary.

22 (2) The board may:

23 (A) Require additional proceedings; and

24 (B) Approve and have executed any other proceedings,
25 agreements, trust agreements, or other instruments necessary or convenient to
26 the issuance of the bonds.

27
28 15-5-1805. Terms and conditions.

29 (a) The Arkansas Development Finance Authority shall be the issuer of
30 bonds for energy efficiency projects under this subchapter.

31 (b)(1) The authority shall not issue bonds under this subchapter
32 unless:

33 (A) A state entity has:

34 (i) Applied for approval of a proposed guaranteed
35 energy savings contract and the issuance of bonds by the authority;

36 (ii) Submitted a resolution to the authority

1 authorizing the issuance of the bonds; and

2 (iii) Submitted the proposed guaranteed energy
3 savings contract with a qualified provider under § 15-5-1806 to the authority
4 for approval; and

5 (B) The authority determines that the energy savings to be
6 realized from the energy efficiency project are sufficient to fund the
7 requested bond issue.

8 (2)(A) Upon approval and execution of the guaranteed energy
9 savings contract, the authority shall proceed with the issuance of the bonds
10 under this subchapter.

11 (B)(i) If the guaranteed energy savings contract is not
12 approved, the authority shall notify the state entity in writing, and the
13 bonds shall not be issued.

14 (ii) The state entity may resubmit a request for
15 approval of the issuance of bonds, and a resubmitted request shall be handled
16 in the same manner as the initial request under this section.

17
18 15-5-1806. Guaranteed energy savings contract – Security for bonds.

19 (a)(1) A state entity may enter into a guaranteed energy savings
20 contract with a qualified provider if the Board of Directors of the Arkansas
21 Development Finance Authority approves the guaranteed energy savings contract
22 based on finding that the amount the state entity would spend on the energy
23 efficiency project detailed in the guaranteed energy savings contract would
24 not exceed the amount to be saved in any combination of energy costs,
25 operational costs, or future capital expenditures avoided within a twenty-
26 year period from the date of installation if the recommendations in the
27 proposed guaranteed energy savings contract are followed.

28 (2) The guaranteed energy savings contract shall include:

29 (A) The estimates of all costs of installation,
30 modifications, or remodeling, including without limitation costs of an
31 investment-grade preinstallation energy audit and analysis, design,
32 engineering, installation, commissioning, maintenance, repairs, debt service,
33 postinstallation project monitoring, savings measurement and verification,
34 and data collection and reporting;

35 (B) A determination regarding whether the energy consumed,
36 the operating costs, or both will be reduced;

1 (C) The qualifications of the qualified provider;

2 (D) The amount and specific sources of operational savings
3 and capital cost avoidance that the state entity acknowledges will occur
4 without future measurement and verification;

5 (E) A signed statement from an Arkansas-licensed
6 professional engineer that he or she is a member of the qualified provider's
7 project team that completed a preinstallation energy audit and analysis of
8 the state entity's buildings or facilities; and

9 (F) The reasonably expected useful life of each
10 recommended energy efficiency project.

11 (3) The guaranteed energy savings contract:

12 (A)(i) May provide that all payments are to be made over
13 time.

14 (ii) However, obligations on termination of the
15 guaranteed energy savings contract before its expiration shall not be paid
16 over time; and

17 (B) Shall provide that the energy cost savings are
18 guaranteed by the qualified provider to the extent necessary to pay the costs
19 of the energy efficiency project, including the costs of financing and annual
20 services, which includes without limitation the measurement and verification
21 of the guaranteed energy-cost savings.

22 (4) If a guaranteed energy savings contract is to be executed
23 concurrently with one (1) or more conventional construction contracts for a
24 common structure, the guaranteed energy savings contract shall be a separate
25 and distinct contract.

26 (5)(A) Except as provided in subdivision (a)(5)(C) of this
27 section, before a state entity may submit a proposed guaranteed energy
28 savings contract to the authority for approval, the proposed guaranteed
29 energy savings contract shall be reviewed by an engineer who is:

30 (i) Licensed under §§ 17-30-301 – 17-30-307; and

31 (ii) Designated by the Arkansas Development Finance
32 Authority as qualified to review guaranteed energy savings contracts.

33 (B)(i) The engineer conducting the guaranteed energy
34 savings contract review shall report to the state entity any comments or
35 issues that he or she believes merit consideration by the state entity before
36 the state entity executes the guaranteed energy savings contract.

1 (ii) The engineer does not have any liability for
2 any estimation of energy savings generated as part of a guaranteed energy
3 savings contract review under this subdivision (a)(5).

4 (C) Third-party review by an engineer as provided in this
5 subdivision (a)(5) is not required if the qualified provider demonstrates
6 that it is a current member in good standing with the energy service company
7 or energy service provider category of the National Association of Energy
8 Service Companies.

9 (b) The qualified provider shall:

10 (1) Provide to the state entity an annual reconciliation report
11 of the guaranteed energy-cost savings;

12 (2) Reimburse the state entity for any annual shortfall of
13 guaranteed energy-cost savings as stated in the guaranteed energy savings
14 contract;

15 (3) Provide a payment and performance bond to the state entity
16 for its faithful performance of the guaranteed energy savings contract; and

17 (4) Provide a letter of credit, surety bond, escrowed funds, or
18 a corporate guarantee from a company with an investment-grade credit rating
19 in an amount necessary to ensure the effective performance of the guaranteed
20 energy savings contract.

21 (c) The authority shall pledge the guaranteed energy savings contract
22 to secure payment of the principal, premium, and interest on bonds issued by
23 the authority under this subchapter.

24
25 15-5-1807. Tax exemption.

26 The interest on the bonds issued under this subchapter shall be exempt
27 from state, county, and municipal income, inheritance, and estate taxes.

28
29 15-5-1808. Refunding bonds.

30 (a) The Arkansas Development Finance Authority may provide by
31 resolution for the issuance of refunding bonds to refund outstanding bonds
32 issued under this subchapter and any accrued interest on those bonds.

33 (b) The authority may:

34 (1) Sell the refunding bonds and use the proceeds to retire the
35 outstanding bonds issued under this subchapter;

36 (2) Exchange the refunding bonds for the outstanding bonds; and

1 (3) Refund the bonds in the manner provided by any other
2 applicable statute.

3
4 15-5-1809. Applicability.

5 This subchapter:

6 (1) Applies only to the following governmental units:

7 (A) The state; and

8 (B) An agency board, commission, or instrumentality of the
9 state; and

10 (2) Does not apply to the following governmental units:

11 (A) A county, municipality, school district, or other
12 political subdivision of the state;

13 (B) A special assessment or taxing district established
14 under the laws of the state; and

15 (C) An agency, board, commission, or instrumentality of an
16 entity listed in subdivisions (2)(A) or (2)(B) of this section.

17
18 15-5-1810. Subchapter supplemental to other laws.

19 This subchapter is:

20 (1) Supplemental to other laws on the subject, and the Arkansas
21 Development Finance Authority may use provisions of other applicable laws in
22 the issuance of bonds and other obligations under this subchapter; and

23 (2) Sufficient authority for the issuance of bonds and the
24 performance of all other acts and procedures authorized by this subchapter.

25
26 15-5-1811. Rules.

27 The Arkansas Development Finance Authority may promulgate rules to
28 implement this subchapter.

29
30 SECTION 2. Arkansas Code § 15-5-103, concerning the definitions to be
31 used under the Arkansas Development Finance Authority Act, is amended to add
32 an additional subdivision to read as follows:

33 (25) "Energy efficiency project" means the same as defined under
34 the State Entity Energy Efficiency Project Bond Act, § 15-5-1801 et seq.

35
36 SECTION 3. Arkansas Code § 15-5-207(b)(10)(A), concerning the rights,

1 powers, privileges, and duties of the Arkansas Development Finance Authority,
2 is amended to read as follows:

3 (10)(A) To issue bonds to provide financing for a specific
4 activity or particular project authorized ~~herein~~ under this chapter or to
5 provide on a pooled or consolidated basis financing for activities or
6 projects authorized ~~hereunder which~~ under this chapter that shall be secured
7 by and payable solely from the bonds, lease payments, or other obligations
8 issued by or payable to the state agencies, political subdivisions of the
9 state, or others for whose benefit the authority may issue bonds, and the
10 security and sources of payments thereof.

11
12 SECTION 4. Arkansas Code § 15-5-301(a)(1), concerning the Arkansas
13 Development Finance Authority’s power to issue bonds, is amended to read as
14 follows:

15 (a)(1) The Arkansas Development Finance Authority is authorized and
16 empowered to issue bonds ~~from time to time~~, whether or not the interest on
17 the bonds is subject to federal income taxation, either for a specific
18 activity or for a particular project or on a pooled or consolidated basis for
19 a series of related or unrelated activities or projects in such amounts as
20 shall be determined by the authority for the purpose of enhancing the Public
21 School Fund or financing qualified agricultural business enterprises, capital
22 improvement facilities, educational facilities, health care facilities,
23 housing developments, industrial enterprises, exports of goods and short-term
24 advance funding of local government obligations, scientific and technical
25 services businesses, technology-based enterprises, tourism enterprises,
26 nonprofit organizations, energy efficiency projects, or any combination of
27 those facilities or enterprises, or any interest in facilities, including,
28 without limitation, leasehold interests in and mortgages on those facilities.