

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 679

By: Senator K. Ingram

For An Act To Be Entitled

AN ACT TO AMEND THE LOCAL GOVERNMENT CAPITAL
IMPROVEMENT REVENUE BOND ACT OF 1985; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE LOCAL GOVERNMENT CAPITAL
IMPROVEMENT REVENUE BOND ACT OF 1985.

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

SECTION 1. Arkansas Code § 14-164-402(12), concerning the definition of "performance-based efficiency project" in the Local Government Capital Improvement Revenue Bond Act of 1985, is amended to read as follows:

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

(A) A new facility that is designed to reduce the consumption of energy or natural resources or result in operating cost savings as a result of changes that:

(i) Do not degrade the level of service or working conditions;

(ii) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, promulgated by the Arkansas Pollution Control and Ecology Commission in the rules



required under § 19-11-1207; and

(iii) Are measured and verified by an audit performed by an independent engineer or by a qualified efficiency engineering company, including the vendor providing the performance-based efficiency project; or

(B) An existing facility alteration that is designed to reduce the consumption of energy or natural resources or result in operating cost savings as a result of changes that conform with subdivisions (12)(A)(i) and (ii) of this section;

SECTION 2. Arkansas Code § 14-164-402(15), concerning the definition of "qualified efficiency contract" in the Local Government Capital Improvement Revenue Bond Act of 1985, is amended to read as follows:

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

~~(A) The qualified efficiency engineering company shall guarantee to the issuer in writing that the issuer will derive efficiency savings from the performance-based efficiency project;~~

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

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

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

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

~~(ii) An amount of cash equal to the aggregate projected efficiency savings to be placed in escrow with an independent~~

~~escrow agent;~~

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

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

~~(v) Any combination of subdivisions (15)(D)(i)-(iv) of this section;~~

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

~~(F) The qualified efficiency engineering company on at least an annual basis shall monitor and reconcile, in units of energy or other appropriate basis depending on the type of operational cost compared, the actual energy savings derived by the issuer from the performance-based efficiency project with the projected energy savings guaranteed by the qualified efficiency engineering company;~~

~~(G) If the reconciliation required by subdivision (15)(F) of this section discloses that the issuer derived from the performance-based efficiency project actual energy savings in an amount less than the projected energy savings, the qualified efficiency engineering company shall pay to the issuer the difference between the projected energy savings and the actual energy savings;~~

~~(H)(i) Performance-based efficiency project plans and specifications must be prepared by the qualified efficiency engineering company for the issuer and shall bear the seal of the professional engineer who prepared the plans and specifications.~~

~~(ii) The professional engineer shall hold a valid professional engineer's license in good standing issued by the State Board of Licensure for Professional Engineers and Professional Surveyors; and~~

~~(I) The qualified efficiency engineer shall provide in~~

~~favor of the issuer a payment and performance bond insuring the qualified efficiency engineering company's faithful performance of the installation and construction required under the qualified efficiency contract~~ a contract for the implementation of one (1) or more performance-based efficiency projects and services provided by a qualified efficiency engineering company in which the energy and cost savings achieved by the installed performance-based efficiency project cover all performance-based efficiency project costs, including financing, over a specified contract term;

SECTION 3. Arkansas Code § 14-164-402(16), concerning the definition of "qualified efficiency engineering company" in the Local Government Capital Improvement Revenue Bond Act of 1985, is amended to read as follows:

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

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

~~(B) Develops, designs, installs, constructs, maintains, measures, monitors, and verifies the operation of a performance-based efficiency project, pursuant to a qualified efficiency contract with an issuer~~ a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

(A) Is properly licensed in the State of Arkansas;

(B) Has been reviewed and certified as a qualified efficiency engineering company under this subchapter;

(C) Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures;

(D) Has at least five (5) years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements;

(E) Has the ability to arrange or provide the necessary financing to support a qualified efficiency contract; and

(F) Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors;

APPROVED: 4/17/19