

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S4/3/13
A Bill

SENATE BILL 824

By: Senator D. Johnson
By: Representative Williams

For An Act To Be Entitled

AN ACT TO PROVIDE ENABLING LEGISLATION FOR AMENDMENT 89 TO THE ARKANSAS CONSTITUTION RELATING TO ENERGY EFFICIENCY BONDS AUTHORIZED BY STATE ENTITIES; TO PROVIDE FOR THE AUTHORIZATION AND ISSUANCE OF BONDS FOR ENERGY EFFICIENCY PROJECTS; TO ALLOW THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO ISSUE BONDS AT THE REQUEST OF A STATE ENTITY FOR ENERGY EFFICIENCY PROJECTS; TO REGULATE ENERGY EFFICIENCY PROJECT BONDS; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE ENABLING LEGISLATION FOR AMENDMENT 89 TO THE ARKANSAS CONSTITUTION RELATING TO ENERGY EFFICIENCY BONDS AUTHORIZED BY STATE ENTITIES.

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

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

Subchapter 18 –

State Entity Energy Efficiency Project Bond Act

15-5-1801. Title.

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



15-5-1802. Purpose.

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

(b) It is found and determined that:

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

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

15-5-1803. Definitions.

As used in this subchapter:

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

(2) "Energy efficiency project" means an improvement, repair, alteration, or renovation of a new building design or an existing building or facility owned or operated by a state entity or any equipment, fixture, or furnishing to be added to or used in a building or facility owned or operated by a state entity that is designed to reduce energy consumption or operating costs; and

(3) "State entity" means:

(A) The state; and

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

15-5-1804. Issuance of bonds.

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

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

(2) Refunding bonds issued under this subchapter; and

(3) Paying the costs of issuing the bonds.

(b)(1) The bonds may be:

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

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

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

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

(4) Notwithstanding any law to the contrary, a state entity may use maintenance and operations appropriations to pay for an energy efficiency project.

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

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

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

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

(2) The board may:

(A) Require additional proceedings; and

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

15-5-1805. Terms and conditions.

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

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

(A) A state entity has:

(i) Applied for approval; and

(ii) Submitted a resolution to the authority authorizing the issuance of bonds.

(B) The authority determines that the energy savings to be realized from the energy efficiency project and other available revenues are sufficient to fund the requested bond issue.

(2)(A) Upon approval, the authority shall proceed with the issuance of the bonds under this subchapter.

(B) If the bonds are not approved, the state entity may resubmit a request for approval of the issuance of bonds, and a resubmitted request shall be handled in the same manner as the initial request under this section.

15-5-1806. Tax exemption.

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

15-5-1807. Refunding bonds.

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

(b) The authority may:

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

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

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

15-5-1808. Applicability.

This subchapter:

(1) Applies only to the following governmental units:

(A) The state; and

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

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

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

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

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

15-5-1809. Subchapter supplemental to other laws.

This subchapter is:

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

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

15-5-1810. Rules.

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

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

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

SECTION 3. Arkansas Code § 15-5-207(b)(10)(A), concerning the rights, powers, privileges, and duties of the Arkansas Development Finance Authority, is amended to read as follows:

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

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

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

SECTION 5. Arkansas Code § 19-4-522(d)(1)(S), as created by Section 1 of Act 554 of 2013 and concerning maintenance and operations subclassifications and expenses, is amended to read as follows:

(S) Debt service on equipment or measures required by a guaranteed energy cost savings contract executed under the Guaranteed Energy Cost Savings Act, § 19-11-1201 et seq., or an energy efficiency project financed under the State Entity Energy Efficiency Act, § 15-5-1801 et seq.;

SECTION 6. Arkansas Code § 19-11-1208, as created by Section 7 of Act 554 of 2013, is amended to read as follows:

19-11-1208. Use of maintenance and operation appropriations.

(a) Notwithstanding any law to the contrary, a state agency may utilize maintenance and operations appropriations for the payment of equipment and energy cost savings measures required by a guaranteed energy cost savings contract.

(b) An energy cost savings measure shall be treated as an energy efficiency project under Arkansas Constitution, Amendment 89.

/s/D. Johnson