

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

State of Arkansas
90th General Assembly
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As Engrossed: H3/20/15
A Bill

HOUSE BILL 1646

By: Representative D. Douglas

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS APPLICABLE TO CERTAIN ENERGY EFFICIENCY CONTRACTS AND PROJECTS; TO AMEND THE LOCAL GOVERNMENT CAPITAL IMPROVEMENT REVENUE BOND ACT; TO AMEND THE GUARANTEED ENERGY COST SAVINGS ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS APPLICABLE TO CERTAIN ENERGY EFFICIENCY CONTRACTS AND PROJECTS; TO AMEND THE LOCAL GOVERNMENT CAPITAL IMPROVEMENT REVENUE BOND ACT; AND TO AMEND THE GUARANTEED ENERGY COST SAVINGS ACT.

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

SECTION 1. Arkansas Code § 6-20-405, concerning energy savings contracts for school districts, is amended to add an additional subsection to read as follows:

(f)(1) The maximum term of an energy savings contract shall not exceed the useful life of the energy conservation measures that are the subject of the energy savings contract.

(2)(A) If more than one (1) type of energy conservation measure is financed through a single debt issue under an energy savings contract under this section, the term of the debt issue shall not exceed the weighted average useful life of the equipment procured and installed to accomplish the energy conservation measures.



(B) In making the determination of the weighted average useful life of the equipment procured and installed under this subdivision (f)(2), the useful life for each item or category of equipment shall be weighted on the basis of the initial capital cost of the item or category of equipment compared to the total initial capital cost of all equipment for energy conservation measures to be financed through the single debt issue.

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

(J) To encourage the implementation of performance-based efficiency projects that result in a high level of energy and efficiency savings that can be reasonably estimated before implementation, the issuer may substitute the terms and conditions stated in subdivisions (15)(A)-(G) of this section with documentation that verifies that:

(i) The performance-based efficiency project results in estimated efficiency savings that on an annual basis are equal to a minimum of one hundred thirty-five percent (135%) of the annual cost, including debt service, required to implement the performance-based efficiency project;

(ii) The estimated efficiency savings of the performance-based efficiency project have been reviewed and verified by a professional engineer, as defined in § 17-30-101, who is not affiliated or associated with the qualified efficiency engineering company; and

(iii)(a) If more than one (1) type of energy efficiency measure is financed through a single debt issue under a qualified efficiency contract under this subchapter, the term of the debt issue does not exceed the weighted average useful life of the equipment procured and installed to accomplish the performance-based efficiency project.

(b) In making the determination of the weighted average useful life of the equipment procured and installed under this subdivision (15)(J)(iii), the useful life for each item or category of equipment shall be weighted on the basis of the initial capital cost of the item or category of equipment compared to the total initial capital cost of all equipment for energy efficiency measures to be financed through the

single debt issue.

SECTION 3. Arkansas Code § 14-164-405, concerning the issuance of bonds under the Local Government Capital Improvement Revenue Bond Act of 1985, is amended to add an additional subsection to read as follows:

(c)(1) The maximum term of a qualified efficiency contract shall not exceed the useful life of the energy efficiency measures that make up the performance-based efficiency project that is the subject of the qualified efficiency contract.

(2) In determining the useful life of the energy efficiency measures and the overall performance-based efficiency project, the municipality or county shall consider the determination made under § 14-164-402(15)(J)(iii).

SECTION 4. Arkansas Code § 19-11-1206(a) and (b), concerning guaranteed energy cost savings contract requirements, are amended to read as follows:

(a) The following provisions are required in a guaranteed energy cost savings contract:

(1) A statement that the state agency shall maintain and operate the energy cost savings measures as defined in the guaranteed energy cost savings contract; and

(2) Either:

(A) A guarantee by the qualified provider that:

~~(A)~~ (i) The energy cost savings and operational cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy cost savings measures; and

~~(B)~~ (ii) If the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measure as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the state agency for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract; ~~or~~

(B) Documentation by the state agency verifying that:

(i) The energy cost savings measure:

(a) Satisfies the definition of "energy cost savings measure" under § 19-11-1202(1)(A)(ii); and

(b) Will result in estimated energy cost savings and operational cost savings that on an annual basis are equal to a minimum of one hundred thirty-five percent (135%) of the annual cost, including debt service, required to implement the energy cost savings measure;

(ii) The estimated operational cost savings of the energy cost savings measure have been reviewed and verified by a professional engineer, as defined in § 17-30-101, who is not affiliated or associated with the qualified provider for the project; and

(iii)(a) If more than one (1) type of energy cost savings measure is financed through a single debt issue under this subchapter, the term of the debt issue does not exceed the weighted average useful life of the equipment procured and installed to accomplish the energy cost savings measures.

(b) In making the determination of the weighted average useful life of the equipment procured and installed under this subdivision (a)(2)(B)(iii), the useful life for each item or category of equipment shall be weighted on the basis of the initial capital cost of the item or category of equipment compared to the total initial capital cost of all equipment for energy cost savings measures to be financed through the single debt issue.

(b) The maximum term for a guaranteed energy cost savings contract is ~~twenty~~ the lesser of:

(1) Twenty (20) years after the implementation of the energy cost savings measures; or

(2)(A) The useful life of the energy cost savings measures that are the subject of the guaranteed energy cost savings contract.

(B) In determining the useful life of the energy cost savings measures, the state agency shall consider the determination made under subdivision (a)(2)(B)(iii) of this section.

SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 12, is amended to add an additional section to read as follows:

19-11-1209. Evaluation of qualified providers.

(a) To promote entrepreneurship and encourage increased fair and appropriate competition among qualified persons or businesses desiring to

expand or enter the field of completing projects involving energy cost savings measures, the Arkansas Energy Office, for purposes of certifying qualified providers, shall give full and fair consideration to each energy efficiency and facility improvement project completed by a person or business, including without limitation all subcontractors and employees of the person or business, applying for certification as a qualified provider regardless of whether:

(1) The project was completed under a guaranteed energy cost savings contract; and

(2) The financing for the project was arranged or provided by the person or business.

(b) The office shall evaluate and approve qualified providers, using the standards stated in § 19-11-1202 and this section, within ninety (90) days of submission by an applicant of information demonstrating that the applicant qualifies to complete energy cost savings measures as a qualified provider.

/s/D. Douglas