

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

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: S3/24/15  
**A Bill**

SENATE BILL 869

By: Senator D. Johnson  
By: Representative *Sabin*

### **For An Act To Be Entitled**

AN ACT TO PROVIDE ENABLING LEGISLATION FOR ENERGY EFFICIENCY PROJECT BONDS ISSUED BY A MUNICIPALITY OR COUNTY UNDER ARKANSAS CONSTITUTION, AMENDMENT 89; TO CREATE THE LOCAL GOVERNMENT ENERGY EFFICIENCY PROJECT BOND ACT; AND FOR OTHER PURPOSES.

### **Subtitle**

TO PROVIDE ENABLING LEGISLATION FOR ENERGY EFFICIENCY PROJECT BONDS ISSUED BY A MUNICIPALITY OR COUNTY; AND TO CREATE THE LOCAL GOVERNMENT ENERGY EFFICIENCY PROJECT BOND ACT.

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

*SECTION 1. Arkansas Code Title 14, Chapter 164, is amended to add an additional subchapter to read as follows:*

*Subchapter 8 – Local Government Energy Efficiency Project Bond Act*

*14-164-801. Title.*

*This subchapter shall be known and may be cited as the “Local Government Energy Efficiency Project Bond Act”.*



14-164-802. Purpose – Legislative findings.

(a) The purpose of this subchapter is to provide financing for energy efficiency projects for municipalities and counties under Arkansas Constitution, Amendment 89.

(b) The General Assembly finds that:

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

(2) The duties imposed upon and authority granted to municipalities and counties 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.

14-164-803. Definitions.

As used in this subchapter:

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

(2) “Chief executive officer” means the chief executive officer of a municipality or the county judge of a county;

(3) “County” means a county in the State of Arkansas;

(4) “Energy efficiency project” means:

(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, as adopted by the Arkansas Energy Office 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 provider, including the vendor providing the energy 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 (4)(A)(i) and (ii) of this section;

(5) “Guaranteed energy cost savings contract” means a contract

for the implementation of one (1) or more energy efficiency projects and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy efficiency project cover all energy efficiency project costs, including financing, over a specified contract term;

(6) "Issuer" means a municipality or a county;

(7) "Legislative body" means the quorum court of a county or the council, board of directors, board of commissioners, or similar elected governing body of a city or town;

(8) "Municipality" means a city or incorporated town in the State of Arkansas;

(9) "Operating cost savings" means expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed;

(10) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of a legislative body; and

(11) "Qualified provider" means the same as defined in § 19-11-1202.

14-164-804. Energy efficiency projects authorized.

(a)(1) A municipality or county may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities under this subchapter.

(2) A municipality or county may enter into an installment payment contract or lease purchase agreement with a qualified provider for the purchase and installation of an energy efficiency project in accordance with this subchapter.

(b) An energy efficiency project shall comply with current local, state, and federal construction and environmental codes and regulations.

14-164-805. Method of solicitation.

A solicitation of a guaranteed energy cost savings contract by a county or municipality shall be consistent with applicable procurement laws.

14-164-806. Evaluation of responses to solicitations.

(a) In a municipality's or county's evaluation of each qualified

provider's response to a solicitation under § 14-164-805, the municipality or county shall include an analysis of:

(1) Whether the qualified provider meets the objectives of the solicitation, including without limitation a reduction in the municipality's or county's energy consumption or operating costs resulting from a guaranteed energy cost savings contract with the qualified provider;

(2) The qualifications and experience of the qualified provider;

(3) The technical approach to the energy efficiency project;

(4) The financial aspects of the energy efficiency project;

(5) The overall benefit to the municipality or county; and

(6) Any other relevant factors.

(b) After evaluating a response to a solicitation as required under subsection (a) of this section, a municipality or county may:

(1) Reject the response; or

(2) Award a contract to a qualified provider to conduct an energy audit to be used in developing the guaranteed energy cost savings contract.

14-164-807. Guaranteed energy cost savings contract requirements.

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

(1) A statement that the municipality or county shall maintain and operate the energy efficiency project as defined in the guaranteed energy cost savings contract; and

(2) A guarantee by the qualified provider that:

(A) The energy cost savings and operating cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy efficiency project; and

(B) If the annual energy or operating cost savings fail to meet or exceed the annual costs of the energy efficiency project as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the municipality or county for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.

(b) The maximum term for a guaranteed energy cost savings contract is twenty (20) years after the implementation of the energy efficiency project.

(c) Before entering into a guaranteed energy cost savings contract,

the municipality or county shall require the qualified provider to file with the municipality or county a payment and performance bond or similar assurance.

14-164-808. Bonds – Issuance generally.

(a)(1) A municipality or county may issue bonds for an energy efficiency project within, near, or within and near the municipality or county.

(2) Bonds shall be issued pursuant to an ordinance adopted by the legislative body specifying:

(A) The principal amount of bonds to be issued;

(B) The purpose or purposes for which the bonds are to be issued; and

(C) Any other provisions deemed important with respect to the bonds.

(b) A legislative body shall not adopt an ordinance regarding the issuance of bonds unless the legislative body has determined that:

(1) All of the work on the energy efficiency project will be performed by a qualified provider; and

(2) The qualified provider has provided a guarantee of the operating cost savings to be realized from the energy efficiency project that:

(A) The energy cost savings and operating cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy efficiency project; and

(B) If the annual energy or operating cost savings fail to meet or exceed the annual costs of the energy efficiency project as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the issuer for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.

(c) The maximum term of the bonds may not exceed the shorter of:

(1) The useful life of the energy efficiency project; or

(2) Twenty (20) years.

14-164-809. Bonds – Terms and conditions.

(a) As provided by an ordinance or trust indenture authorized under

this subchapter, bonds may:

(1) Be in registered or other form;

(2) Be in such denominations as determined by the legislative body;

(3) Be exchangeable for bonds of another denomination;

(4) Be made payable at places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear the date or dates determined by the legislative body of the issuer;

(7) Mature at the time or times determined by the legislative body of the issuer;

(8) Be payable in such medium of payment determined by the legislative body of the issuer;

(9) Be subject to the terms of redemption determined by the legislative body of the issuer; and

(10) Contain other terms, covenants, and conditions determined by the legislative body of the issuer, including without limitation terms, covenants, and conditions pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The maintenance of various funds and reserves;

(C) The nature and extent of the pledge and security;

(D) The remedies on default; and

(E) The rights, duties, and obligations of the legislative body of the issuer and the trustee, if any, for the owners of the bonds, and the rights of the owners of the bonds.

(b) All bonds are negotiable instruments within the meaning of the negotiable instruments law of the state.

14-164-810. Bonds – Trust indenture.

(a) The ordinance authorizing bonds may provide for the execution by the chief executive officer of the issuer of a trust indenture that:

(1) Defines the rights of the owners of the bonds; and

(2) Provides for the appointment of a trustee for the owners of the bonds.

(b) A trust indenture executed under this section may:

(1) Provide for the priority between and among successive issues; and

(2) Contain one (1) or more of the provisions stated in § 14-164-809 and any other terms, covenants, and conditions that are deemed desirable.

14-164-811. Bonds – Sale.

(a) Bonds may be sold at a public or private sale for the price and in the manner determined by the legislative body of the issuer.

(b) Bonds sold under this subchapter may be sold at a discount or a premium.

14-164-812. Bonds – Execution.

Bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq.

14-164-813. Bonds – Payment – Security.

(a) The principal of and interest on the bonds may be secured by a pledge of the operating cost savings derived from the energy efficiency project, and a municipality or county may pledge or assign a guaranteed energy cost savings contract to secure the bonds.

(b) The total annual principal and interest payments in each fiscal year on bonds shall be charged against and paid from general revenues, special revenues, revenues derived from taxes, or any other revenues available to the municipality or county if the special revenues, revenues derived from taxes, or other revenues have not been previously restricted to another purpose.

(c) Notwithstanding any law to the contrary, a municipality or county may use money budgeted for maintenance and operations to pay the principal of and interest on bonds issued for an energy efficiency project under this subchapter.

(d)(1) Bonds are not revenue bonds for purposes of any statute.

(2) The legislative body is not required to hold a public hearing on the issuance of the bonds.

14-164-814 Bonds – Energy efficiency project liens.

(a) An ordinance or trust indenture authorized under § 14-164-808 or § 14-164-810 may impose a financing lien on an energy efficiency project financed or refinanced, in whole or in part, with the proceeds of bonds.

(b) The nature and extent of a lien imposed under this section may be controlled by the ordinance or trust indenture, including without limitation provisions pertaining to:

(1) The release of all or part of the land, buildings, or facilities from the lien;

(2) The priority of the lien in the event of successive bond issues; and

(3) The authorization of any owner of bonds, or a trustee on behalf of all owners, to enforce the lien and, by proper suit, compel the performance of the duties of the officials of the issuer stated in this subchapter or in the ordinance or trust indenture authorizing or securing the bonds.

(c) As used in this section, "lien" includes a security interest in any personal property constituting an energy efficiency project and any part of an energy efficiency project financed or refinanced, in whole or in part, with the proceeds of bonds issued under this subchapter.

14-164-815. Liability of legislative body's officers, employees, and members.

An officer, employee, or member of the legislative body of an issuer under this subchapter shall not be personally liable on bonds or for damages sustained by a person in connection with a guaranteed energy cost savings contract entered into to carry out the purposes and intent of this subchapter unless the person has acted with a corrupt intent.

14-164-816. Tax exemption.

Bonds and the income on the bonds are exempt from all state, county, and municipal taxes, including without limitation income, property, and inheritance taxes.

14-164-817. Refunding bonds.

(a) Bonds may be issued to refund any outstanding bonds or to refund

any outstanding bonds issued under any other law for the purpose of financing energy efficiency projects.

(b)(1) Refunding bonds may be sold for cash or delivered in exchange for the outstanding obligations under subsection (a) of this section.

(2) If refunding bonds are sold for cash under subdivision (b)(1) of this section, the proceeds may be applied to the payment of the obligations refunded or deposited into an irrevocable trust for the retirement of the refunding bonds either at maturity or on an authorized redemption date.

(c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided in this subchapter.

(d) The ordinance under which refunding bonds are issued may provide that any refunding bonds shall have the same priority of lien on revenues as originally pledged for payment of the obligation refunded by the refunding bonds.

14-164-818. Applicability.

This subchapter:

(1) Applies only to municipalities and counties; and

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

(A) The state and any agency, board, commission, or instrumentality of the state;

(B) A school district; or

(C) A special assessment or taxing district established under the laws of the state.

14-164-819. Subchapter supplemental to other laws.

This subchapter is:

(1) Supplemental to other laws, and municipalities and counties may use 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.

14-164-820. Construction.

This subchapter shall be construed liberally to effectuate the

legislative intent and the purposes of this subchapter as a complete and independent authority for the performance of the acts authorized under this subchapter, and the powers granted under this subchapter shall be broadly interpreted to effectuate the intent and purposes and shall not be interpreted as a limitation of powers.

14-164-821. Rules.

A municipality or county may provide by ordinance that the municipality or county shall comply with the rules promulgated by the Arkansas Energy Office under § 19-11-1207.

/s/D. Johnson