

# **Industrial Revenue Bond Guaranty Law (Act 173 of 1967, as amended) Arkansas Bond Guaranty Program Rules and Regulations**

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## **I. Introduction**

The Bond Guaranty Program was created to provide long-term, tax-exempt and taxable financing for businesses expanding or locating in Arkansas. Although the city or county may issue the revenue bond, the company is still responsible for paying the principal and interest. Under this program, the Department “guarantees” timely payment of principal and interest, up to five million dollars (\$5,000,000) principal per bond issue, to the bondholders. This guaranty gives the bonds a better rating, thereby making the bonds more attractive to investors and reducing the company’s cost to borrow money.

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## **II. Definitions**

- A. “Act 9 bonds” means revenue bonds issued in accordance with the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law (ACA 14-164-201 et seq.) to benefit private companies. A vote of the local governing body is required to issue these bonds.
- B. “ADFA” means the Arkansas Development Finance Authority.
- C. “ADFA bonds” means revenue bonds issued by the Arkansas Development Finance Authority in accordance with the Arkansas Development Finance Authority Act, ACA 15-5-101 et seq., ACA 15-5-201 et seq., and ACA 15-5-301 et seq.
- D. “Department” means the Arkansas Department of Economic Development.
- E. “Direct loans” means loans as defined by ACA 15-103 (13) and including bond anticipation loans.

- F. “Director” means the Director of the Arkansas Department of Economic Development.
- G. “Lessee” means a person, business or firm who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- H. “Local governing body” means the quorum court of a county or the council, board of directors, or other elected governing body of a municipality.

### **III. To Qualify for the Program a Business Must**

- A. To qualify for a tax-exempt industrial revenue bond (IRB), a company must meet the following eligibility criteria:
  - 1. The firm must be engaged in manufacturing, processing or other activities directly supporting or related to manufacturing or processing;
  - 2. The total capital expenditures in a project must not exceed ten million dollars (\$10,000,000) for a six (6) year period; and
  - 3. The capital expansion should create new jobs.
- B. In order for the Department to guarantee the debt service (principal and interest) of bonds issued under Act 9, certain circumstances, including, but not limited to, the following shall be addressed:
  - 1. There shall be documentary evidence produced from investment bankers that the bonds are not saleable without this guaranty;
  - 2. The lessee must have a proven financial history and must have been in a similar or related business at least three years prior to the bond guaranty application;
  - 3. There is documentary evidence that by the addition or expansion of plant facilities, substantial employment is involved;
  - 4. There is a legal opinion to the effect that the industrial project involves manufacturing, processing, or other activities directly related to or supporting a manufacturing or processing industry;
  - 5. The lessee will not purchase or own at any time any of such bonds;
  - 6. The lessee is found to be financially responsible for, and sufficient rental income may be reasonably expected to amortize in an orderly manner, the interest on a principal amount of the bonds as evidenced by:
    - (a) An analysis of the business history of the lessee and/or principals thereof;
    - (b) An evaluation of the most recent three (3) years audited annual financial statements as prepared by an independent certified

public accounting firm. If the most recent annual statement is more than ninety (90) days old, then an unaudited interim statement must be provided; and

- (c) A pro-forma projection for the ensuing three (3) years in substantially the same form as attached;
  - 7. There is a commitment to pay a one-time premium in the amount of five percent (5%) of the principal amount to be guaranteed or three percent (3%) of the debt service, whichever is greater; and
  - 8. Collateral for the issue will be substantiated by a perfected first mortgage on capital expenditures that are obtained in whole or in part by proceeds of the bond issue along with corporate and/or personal guarantees.
- C. The company shall develop a project overview which addresses the following eligibility considerations:
- 1. Total project costs;
  - 2. Specific uses of the funds;
  - 3. Company's financial strength;
  - 4. Type of operation (manufacturing, etc.);
  - 5. Expected new employment at location of project; and
  - 6. Relevant information about profitability of project.
- D. If the Department's staff determines that the project is feasible, it is recommended that the company simultaneously contact the following:
- 1. Bond counsel to assist in completing the process and to insure its legality;
  - 2. City/County officials which must submit the issue on behalf of the local government involved; and
  - 3. Bond underwriters to submit bids on underwriting the bond issue.
- E. A business plan and legal documentation must be submitted to the Department in order for the Department's staff to prepare an application for the Arkansas Economic Development Commission's (AEDC) Bond Guaranty Committee, which will approve or reject the bond guaranty application. If the project is approved, it will go before the full AEDC for final approval. Regardless of whether the application is approved or rejected, the company will be notified of the final decision by the Department's staff.

#### **IV. Administration of Benefits**

- A. Eligible Activities – As a general rule, bond proceeds can be used to purchase or construct fixed assets including land, building and equipment. Certain limitations, as governed by the IRS tax code, may apply. Experienced

municipal bond counsel should be consulted as to eligible activities, but the following minimum restrictions must be adhered to:

1. When an existing building is purchased, fifteen percent (15%) of the purchase price must be expended on renovation; and
  2. When proceeds are used to purchase used equipment, one hundred percent (100%) of the purchase prices must also be expended to renovate that equipment.
- B. Sequence of Events – There are a number of activities that must occur before a bond guaranty can be executed by the Department. Following is a list of those activities:
1. Memorandum of Intent by the Governing Body (City or County) – This step is not required by state law, but is often utilized to fulfill requirements by the Internal Revenue Service to show “intent” to use tax exempt revenue bond financing. The memorandum should be issued prior to the commencement of a project (the purchase of any land, building or equipment to be financed). This process allows the company to recover any “out-of-pocket” expenditure from the tax-exempt funds. The company should contact an Arkansas licensed bond attorney to draft the memorandum.
  2. Notice of Hearing – Ten (10) days prior to the hearing, notice must be given setting forth the date of the hearing. The notice must be published one (1) time in a newspaper of general circulation.
  3. Public Hearing – A public hearing must be held before the governing body, whether it is the city or county, prior to the adoption of an ordinance.
  4. Referendum Period of Thirty (30) Days – The Constitution of the State of Arkansas requires that the governing body exercise a referendum period. This period is to allow time for a petition, if desired, by the general public requiring the issue to be subjected to a general election. This period is normally thirty (30) days in the case of a municipal issue.
  5. Execution of Documents – After a minimum period of forty-five (45) days, the industrial revenue bond issue may close. At this time, the money is delivered. It should be remembered, however, interim financing may be used to start the project without affecting the tax exempt status of the issue once the memorandum of intent has been issued by the governing body.

## V. Application Process

- A. The application for the Bond Guaranty Program must be filed with the Department a minimum of thirty (30) days prior to the next meeting of the Arkansas Economic Development Commission (AEDC), which is regularly held on the third Thursday of each month. The applicant should check with the Business Finance Unit for meeting dates.
- B. Each application should contain or be accompanied by information and exhibits as follows:
1. A description of the total amount of the financing involved, the purpose thereof, and the portion for which the guaranty is requested;
  2. A description of the site, including the total acreage, and a verification of its fair market value (appraisal or other satisfactory evidence);
  3. A general description of the improvements to be made;
  4. A written estimate of cost of construction;
  5. A general description of the machinery and equipment to be included in the project;
  6. A verification of cost of machinery and equipment (e.g. quotes from suppliers or written estimate by a recognized authority not in regular employ of company);
  7. If existing facilities are involved, written evidence of the current fair market value thereof (appraisal or other satisfactory evidence);
  8. A written statement by an officer of the company as to the average number of employees expected within three (3) years after operations are commenced;
  9. Projected financial statements for the first three (3) years' operation of the project, containing estimates of earnings and expenses and year-end balances;
  10. A description of the capital stock of the company (classes, amounts authorized, amounts outstanding, capital paid in);
  11. A history of the company, description of business, and length of time in business;
  12. Officer's names, ages, and business experience;
  13. Director's names, ages, and business affiliation or profession; amount of the company's stock owned by each officer and director, by class, and the percentage of outstanding stock of each class owned by all officers and directors as a group;
  14. Copies of audited annual financial statements for the most recent three (3) year period including such statements of the parent if a subsidiary is to operate the proposed industrial facilities and the parent is to guarantee performance by its subsidiary. Statements that are more than ninety (90) days old must be accompanied by interim statements;
  15. Written evidence that the Act No. 9 Bond are not saleable without the guaranty;

16. A commitment to pay a one-time premium payment in the amount of five percent (5%) of the principal amount of the Act No. 9 Bonds to be guaranteed, or three percent (3%) of the total debt service, whichever is greater, with payment to be made before or simultaneously with the issuance of the guaranty;
17. A written statement to the effect that none of the bonds will be purchased or owned by the company; and
18. The Department and/or the AEDC may, if it so elects, require as conditions to the issuance of guaranty, all or any part of the following:
  - (a) That all or certain officers or stockholders execute and deliver to the Trustee, or the Department, their individual personal written guarantees;
  - (b) That all or certain officers deliver to the Trustee certificates representing the shares of the capital stock (of all classes) of the company owned by them, and execute and deliver to the Trustee "Stock Pledge Agreements" on forms commonly used by the Trustee for that purpose;
  - (c) That each or certain specified officers of the company will obtain life insurance upon his life, of a type and issued by a company satisfactory to the Trustee and to the Department;
  - (d) Restrictions as to declaring and paying dividends;
  - (e) Restrictions as to preferential treatment of or making advances, loans, or payments to any other company or organization directly or indirectly controlled by or affiliated with the company;
  - (f) Salary and bonus restrictions;
  - (g) Restrictions as to loans to officers, directors, stockholders, or employees;
  - (h) Restrictions as to incurring indebtedness or encumbering properties;
  - (i) Restrictions as to issuance of additional capital stock;
  - (j) Restrictions as to capital improvements and acquisitions; and
  - (k) Restrictions as to minimum limits on size of corporate new worth.