

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 443

BY: KERR and CAPPS of the
SENATE

and

KINNAMON of the HOUSE

(PUBLIC FINANCE - STATE GOVERNMENT - AMENDING 62
O.S., SECTION 695.11A AND SEVERAL SECTIONS IN
TITLE 74 - OKLAHOMA DEVELOPMENT FINANCE
AUTHORITY AND THE CREDIT ENHANCEMENT RESERVE
FUND -

EMERGENCY)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"(STATE GOVERNMENT - AMENDING 62 O.S., SECTION
695.11A - BOND OVERSIGHT COMMISSIONS -
AMENDING 74 O.S., SECTIONS 5063.4a, 5063.4d
AND 5063.4e - CREDIT ENHANCEMENT RESERVE FUND
ACT - CODIFICATION -

EMERGENCY)

SECTION 1. AMENDATORY Section 14, Chapter 374, O.S.L.
1989, as amended by Section 5, Chapter 342, O.S.L. 1990 (62 O.S.
Supp. 1990, Section 695.11A), is amended to read as follows:

Section 695.11A A. In the event either the Executive or
Legislative Bond Oversight ~~Commissions~~ Commission is found

unconstitutional by a final, unappealed order of a court of competent jurisdiction, all of the powers, duties and responsibilities of the Commissions shall devolve upon the Council of Bond Oversight, and previous joint or individual actions, approvals and disapprovals of the Executive and Legislative Bond Oversight Commissions are hereby confirmed, ratified, validated and deemed incontestable. In the event the Executive or the Legislative Bond Oversight Commission or the Council of Bond Oversight is found unconstitutional by a final, unappealed order of a court of competent jurisdiction, such determination shall not nullify joint or individual actions, approvals and disapprovals of the Executive and Legislative Bond Oversight Commissions or the Council of Bond Oversight and any obligations entered into by the Oklahoma Development Finance Authority pursuant to provisions of the Oklahoma Development Finance Authority Act and the Credit Enhancement Reserve Fund Act with approval by the Bond Oversight Commissions or the Council of Bond Oversight and such obligations are hereby confirmed, ratified, validated and deemed incontestable.

B. The Council shall consist of five (5) nonlegislative members. One member shall be appointed by the Speaker of the House of Representatives, one member shall be appointed by the President Pro Tempore of the Senate, two members shall be appointed by the Governor with the advice and consent of the Senate and one member shall be the Director of State Finance. Three members of the Council shall constitute a quorum. The affirmative vote of three members present and voting shall be necessary for any action taken by the Council. Appointed members shall serve a term of two (2) years and may be removed for cause by the appointing authority. Members may be appointed for additional terms.

C. A vacancy on the Council shall be filled in a like manner as the original appointment, but only for the remainder of the term. The Council shall elect one of its members chairman and may elect

such other officers as it deems necessary. No vacancy in the membership of the Council shall impair the right of the Council to exercise all rights and duties of the Council.

D. If the powers, duties and responsibilities of the Commissions devolve upon the Council pursuant to this section, the person serving as the Oklahoma State Bond Advisor on the date of such devolution shall continue to serve in that position until the Governor appoints a new Oklahoma State Bond Advisor from a list of candidates provided by the Council and said appointee has been confirmed by the Senate. Thereafter, and in the case of a vacancy, the Oklahoma State Bond Advisor shall be appointed, subject to the advice and consent of the Senate, by the Governor from a list of candidates provided by the Council and shall serve a term of office coterminous with that of the appointing Governor. The Oklahoma State Bond Advisor may be removed by the Council for cause, after a public hearing.

SECTION 2. AMENDATORY Section 9, Chapter 342, O.S.L. 1990 (74 O.S. Supp. 1990, Section 5063.4a), is amended to read as follows:

Section 5063.4a A. Credit enhancement granted by the Oklahoma Development Finance Authority shall be categorized by use as portfolio mix categories as follows:

1. Industrial, agribusiness, and other private activity;
2. Infrastructure and other publicly owned facilities of governmental entities; and
3. Health care and other nonprofit-owned facilities.

B. The balance, as determined by the total principal amount authorized pursuant to Section ~~46~~ 5063.11 of this ~~act~~ title less the amount of Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to ~~the effective date of this act~~ June 9, 1990, shall be allocated to the portfolio mix categories as follows:

1. Fifty percent (50%) of said balance shall be allocated to the industrial, agribusiness, and other private activity portfolio mix category;

2. Thirty-five percent (35%) of said balance shall be allocated to the infrastructure and other publicly owned facilities of governmental entities portfolio mix category; and

3. Fifteen percent (15%) of said balance shall be allocated to the health care and other nonprofit-owned facilities portfolio mix category.

C. The Authority is authorized to credit enhance and secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued pursuant to the Oklahoma Development Finance Authority Act and the Credit Enhancement Reserve Fund Act. Except as used for the Small Business Credit Enhancement Program, any ~~credit enhancement granted to loans~~ for which the Authority issues credit-enhanced obligations in the industrial, agribusiness, and other private activity portfolio mix category or to the health care and other nonprofit-owned facilities portfolio mix category shall be subject to the following limitations:

1. The original principal amount of a credit enhancement commitment of the Authority shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00);

2. At the time of ~~loan origination, the credit enhancement commitment of the Authority~~ the Authority's issuance of credit enhancement on its revenue bonds or other financial obligations, the principal amount of the underlying loan may not exceed ninety percent (90%) of a the certified and documented costs of the project to be financed by the loan to a borrower and the minimum ten percent (10%) share provided by another lender shall have a term at least equal to forty percent (40%) of the term of the credit enhanced portion of a loan. It shall be the borrower's responsibility for

obtaining from another lender the remaining minimum ten percent (10%) of the project cost through a loan which shall have a term at least equal to forty percent (40%) of the term of the Authority loan if for the term of ten (10) years or less, or for a term equal to forty percent (40%) of the first ten (10) years plus twenty percent (20%) of any portion of the term of the Authority loan in excess of ten (10) years.

D. To maximize use of the credit enhancement resource and to assure the viability of the Fund, the Fund shall have a balanced portfolio by loan size. In the case of the industrial, agribusiness, and other private activity portfolio mix category and the health care and other nonprofit-owned facilities portfolio mix category, the Fund shall strive to achieve a cumulative average loan size of less than One Million Dollars (\$1,000,000.00).

SECTION 3. AMENDATORY Section 12, Chapter 342, O.S.L. 1990 (74 O.S. Supp. 1990, Section 5063.4d), is amended to read as follows:

Section 5063.4d A. ~~At the time of loan origination, the amount of the insurance commitment backed by the credit enhancement reserve fund~~ the Authority's issuance of credit enhancement on its revenue bonds or other obligations, the principal amount of the underlying loan for industrial, agribusiness, and other private activity portfolio mix category and health care and other nonprofit-owned facilities portfolio mix category financings, excluding infrastructure and other publicly owned facilities of government entities portfolio mix category financings, shall be subject to the following limitations:

1. For costs of financing or refinancing real property, including soft costs associated with the construction or development of the facilities and the insurance premium, the principal amount of the ~~insurance commitment~~ underlying loan will not exceed ninety percent (90%) of the lower of:

- a. the actual certified and documented costs of such projects, or
- b. the appraised (as built) fair market value of the real property as indicated in an independent appraisal by an appraiser acceptable to the Authority;

2. For costs of financing the acquisition of personal property, machinery and equipment, the principal amount of the ~~insurance commitment loan~~ will not exceed seventy-five percent (75%) of the actual certified or documented installation cost, including the expense of delivery, refurbishing and installation. The ~~fund~~ Authority may require an independent appraisal in connection with establishing a fair market value of such personal property and in such case, the principal amount of the ~~fund commitment loan~~ may not exceed seventy-five percent (75%) of the lower of:

- a. the fair market value of such personal property, or
- b. its documented installed costs;

3. ~~Insurance commitments~~ The principal amount of a loan, or portions thereof, secured by accounts receivable, inventory, other current assets and other personal property will not exceed fifty percent (50%) of the value of the collateral as determined by the Oklahoma Development Finance Authority; and

4. ~~Insurance commitments~~ The principal amount of a loan, or portions thereof, secured by cash or cash equivalents or by eligible investment securities will not exceed one hundred percent (100%) of their market value.

B. The maximum amount of an insurance commitment in enhancing a public sector entity financing or refinancing of facilities or program participation will not exceed one hundred percent (100%) of the entity's cost of financing, refinancing or program participation.

C. The provisions of this section shall not apply to credit enhancement of less than One Hundred Thousand Dollars (\$100,000.00) done pursuant to the Small Business Credit Enhancement Program.

D. Limitations on the authorized amounts as established in this section and in Section 5063.4a of this title notwithstanding, the Authority may increase such amounts to provide a cash reserve or to secure a letter of credit or surety bond equal to six-months' principal and interest payments on its revenue bonds or other obligations which fund the underlying loan.

SECTION 4. AMENDATORY Section 13, Chapter 342, O.S.L. 1990 (74 O.S. Supp. 1990, Section 5063.4e), is amended to read as follows:

Section 5063.4e In addition to its other powers and except as applied to Section ~~12 of this act~~ 5063.4d of this title, the Oklahoma Development Finance Authority may select a coinsurer to insure ~~not less than fifty percent (50%) of a pool~~ a percentage of each loan in a pool or in the portfolio of loans for which Credit Enhancement Reserve Fund-backed bonds have been or may be issued, provided that the Authority may also select a coinsurer to insure individual nonpooled loans should such loans be credit enhanced or supported by the Credit Enhancement Reserve Fund. The Authority may contract to pay losses up to a stated limit and permitting principal reductions to be applied to reduce the liability of the coinsurer until its liability is extinguished.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5063.4h of Title 74, unless there is created a duplication in numbering, reads as follows:

To establish a debt-service reserve for those revenue bonds approved for Credit Enhancement Reserve Fund insurance by the Executive and Legislative Bond Oversight Commissions prior to June 9, 1990, the Oklahoma Development Finance Authority is hereby authorized to increase the amounts of credit enhancement, the

revenue bonds and the underlying loans in an amount sufficient to provide a cash reserve or to secure a letter of credit or surety bond equal to six months' principal and interest on the revenue bonds, plus a rounding factor if necessary; provided, the total amount of any such increase shall not exceed ten percent (10%) of the revenue bond amount approved by the Commissions.

SECTION 6. REPEALER Section 90, Chapter 222, O.S.L. 1987 (74 O.S. Supp. 1990, Section 5063.20), is hereby repealed.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 17th day of April, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate