

ENGROSSED HOUSE  
BILL NO. 2101

BY: BATES of the HOUSE

and

HERBERT of the SENATE

( CITIES AND TOWNS - OKLAHOMA MUNICIPAL UTILITY  
REVENUE BOND ACT -  
EFFECTIVE DATE )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-150 of Title 11, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 11 of this act shall be known and may be cited as the "Oklahoma Municipal Utility Revenue Bond Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-151 of Title 11, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Municipal Utility Revenue Bond Act shall serve to implement and execute Section 27B of Article X of the Oklahoma Constitution, and nothing in the Oklahoma Municipal Utility Revenue Bond Act shall be construed in a manner contrary to or inconsistent with the provisions of said constitutional provision.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-152 of Title 11, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Municipal Utility Revenue Bond Act and the implementation of Section 27B of Article X of the Oklahoma Constitution:

1. "Affirmative vote of at least three-fourths (3/4) of all members of such governing body" shall mean an affirmative vote by persons comprising not less than three-fourths (3/4) of the total number of members provided by law, municipal ordinance or charter as constituting the governing body of said municipality;

2. "Bond counsel" shall mean an attorney or firm of attorneys qualified and experienced in public finance transactions, and who renders an opinion as to the validity, enforceability and tax-exempt status of the obligations issued pursuant to the Oklahoma Municipal Utility Revenue Bond Act;

3. "Financial advisor" shall mean a person or firm qualified and experienced in public finance transactions, and who renders advice and counsel to the municipality regarding fiscal and marketing aspects pertaining to the obligations issued pursuant to the Oklahoma Municipal Utility Revenue Bond Act. Provided, any such financial advisor shall not be permitted to bid on, underwrite, purchase or take part in the marketing of the obligations nor have any other pecuniary interest therein, other than the fee negotiated with the municipality for the services of such financial advisor;

4. "Improve" means to construct, reconstruct, maintain, restore, replace, renew, repair, install, equip, extend, purchase, alter or otherwise perform any work which provides a new facility, or enhances, extends or restores the value or usefulness of an existing facility;

5. "Improvement" means any type of improvement made by authority of the Oklahoma Municipal Utility Revenue Bond Act and includes reimprovement of any prior improvement made pursuant to the provisions of this or any other applicable act;

6. "Municipality" shall mean any city or town duly incorporated and validly existing pursuant to the laws of Oklahoma;

7. "Obligations" shall mean collectively, bonds, notes or other evidences of indebtedness, or any of them, issued by a municipality pursuant to Section 27B of Article X of the Oklahoma Constitution and the provisions of the Oklahoma Municipal Utility Revenue Bond Act, and may include refunding obligations;

8. "Public trust" shall mean an Oklahoma public trust created pursuant to and existing in accordance with Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes and which has the municipality as a beneficiary; provided, for purposes of the Oklahoma Municipal Utility Revenue Bond Act, "public trust" shall not include a trust created for industrial purposes; and

9. "Qualified voters" or "voters" shall mean the voters of a municipality duly qualified to vote in a special municipal election on the issuance of bonds of the municipality or on the question of making improvements to public utilities, under the laws, ordinances and charter provisions applicable at the time such election is held. As used in the Oklahoma Municipal Utility Revenue Bond Act, the singular shall include the plural, and unless indicated herein, defined words shall have the same meaning whether or not capitalized.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-153 of Title 11, unless there is created a duplication in numbering, reads as follows:

Any municipality may issue its obligations in the manner set out in the Oklahoma Municipal Utility Revenue Bond Act in order to finance, or to refinance, all or a part of the cost of the acquisition, purchase or construction of, or the making of improvements to any public utility owned or to be owned exclusively by said municipality, and said obligations shall be payable from and secured by the revenues resulting from the operation of the

municipality's revenue-producing public utilities or any part thereof. Provided, nothing herein shall authorize or be construed to authorize a municipality to create a lien or mortgage on, or a security interest in or with respect to such public utility or utilities to secure said obligations. The obligations, when issued and delivered, shall state on the face thereof that the revenue indebtedness or contractual obligations created thereby are limited obligations of the municipality payable from and secured by a lien and charge on the revenues of funds pledged for their payment by the governing body of the municipality and shall not constitute a general indebtedness of the municipality, nor shall it invoke or require the imposition of the general taxing power of such municipality.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-154 of Title 11, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Municipal Utility Revenue Bond Act shall prevent a municipality from dedicating sales taxes or other municipal taxes as an additional source of payment and security for its utility revenue obligations, provided that the dedication of such tax revenue is approved by a majority of municipal voters voting at an election held for that purpose, in the manner set out in Section 2701 of Title 68 of the Oklahoma Statutes and other applicable laws, on a ballot question separate from the question of the issuance of revenue obligations. Further, nothing in the Oklahoma Municipal Utility Revenue Bond Act shall prevent a municipality from purchasing a policy of municipal bond insurance, securing a rating on the creditworthiness of the obligations, obtaining a letter of credit and other such credit enhancement product generally utilized in the public finance industry to further enhance and secure the obligations, provided, that at the time of the securing of such credit enhancement it reasonably appears to the

governing body of the municipality that such credit enhancement shall result in a reduction in the amount of interest to be paid by the municipality over the life of the obligations, taking into account the cost of such credit enhancement. The dedication of such municipal taxes or the providing of credit enhancement for the obligations shall be at the sound discretion of the governing body of the municipality.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-155 of Title 11, unless there is created a duplication in numbering, reads as follows:

Prior to and as a condition precedent to issuing revenue obligations under the Oklahoma Municipal Utility Revenue Bond Act, the governing body of a municipality shall submit the question of issuance of revenue obligations to finance the acquisition, purchase or construction of a public utility or combination of public utilities to qualified voters of the municipality at an election if:

1. The type or kind of public utility or utilities to be financed have not heretofore been owned or operated by the municipality or a public trust having the municipality as its beneficiary; or

2. The question of the acquisition, construction or purchase of the public utility or combination of utilities at issue has not been previously approved by a lawful majority of qualified voters of the municipality voting at an election held within ten (10) years of the date of the election.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-156 of Title 11, unless there is created a duplication in numbering, reads as follows:

Prior to and as a condition precedent to issuing revenue obligations under the Oklahoma Municipal Utility Revenue Bond Act, the governing body of a municipality shall submit the question of

issuance of revenue obligations to finance improvements to a public utility or combination of public utilities if:

1. The improvements are with respect to a public utility or utilities owned by the municipality or by a public trust having the municipality as its beneficiary at the time of the election; and

2. The original acquisition, purchase or construction of the public utility or utilities on which improvements are to be made was not approved by a lawful majority of qualified voters of the municipality voting at an election for that purpose; or

3. The original acquisition, purchase or construction of the public utility or utilities on which improvements are to be made was not accomplished and financed by a public trust of which the municipality is a beneficiary.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-157 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Subject to the provisions of Sections 6 and 7 of this act, upon the affirmative vote of at least three-fourths (3/4) of all the members of the governing body, a municipality may borrow money or issue obligations to finance or refinance acquisition, construction or purchase of or the making of improvements to a public utility or utilities.

B. Obligations issued and sold pursuant to the provisions of the Oklahoma Municipal Utility Revenue Bond Act shall be in such principal amounts and shall mature at such time as determined by the municipal governing body, but in any event the final maturity of the obligations shall not exceed twenty-five (25) years from their date of issuance, and shall bear interest at such annual rate or rates as determined by the governing board of the municipality, provided the rate of interest on the obligations or any particular maturity thereof, shall not exceed fourteen percent (14%) per annum.

C. Evidence of the issuance, sale and delivery of revenue obligations under the Oklahoma Municipal Utility Revenue Bond Act shall be provided by delivering (1) to the Secretary of State a preliminary offering document and notice of sale at least ten (10) business days prior to the date of sale thereof, and (2) to the Secretary of State and the Oklahoma Securities Commission a final offering document within fifteen (15) business days after the delivery thereof.

D. Proceedings relating to the approval, issuance, sale and delivery of revenue obligations under the Oklahoma Municipal Utility Revenue Bond Act shall be subject to the approval of the Bond Commissioner, as provided in Section 9 of this act.

E. In the proceedings leading to the approval, issuance, sale and delivery of revenue obligations under the Oklahoma Municipal Utility Revenue Bond Act, a private attorney or attorneys acting as bond counsel and in other necessary capacities may be employed at a fee to be negotiated by the governing body of the municipality and such attorneys; and the fees and expenses of such counsel may, at the option of the governing body of the municipality, be paid from the proceeds of the obligations or from other available sources.

F. The governing body of the municipality may also, at its option, employ a financial advisor in connection with the issuance and sale of the obligations at a fee to be negotiated by the governing body and the financial advisor. Fees and expenses of the financial advisor, if any are incurred, may be paid from the proceeds of the obligations or from other available sources.

G. Except as provided in subsection H of this section, the obligations issued pursuant to the Oklahoma Municipal Utility Revenue Bond Act shall be sold at competitive bid, to the bidder bidding the lowest net interest cost on the obligations. The obligations may, at the election of the governing body, be sold at a discount of not to exceed four percent (4%) of the principal amount

thereof. Said net interest cost shall include and take into consideration any discount or premium bid on the obligations. Notice of the sale of the obligations shall be published at least ten (10) days prior to the sale thereof, and such notice by publication shall include publication once a week for two (2) consecutive weeks in a legally qualified newspaper of general circulation in the municipality, provided that the date specified in the notice for sale of the obligations shall not be less than ten (10) days after the first publication thereof. Provided further, the notice of sale shall state that the municipality reserves the right to reject any and all bids. The governing body may negotiate for the private sale of the obligations to an underwriter or other purchaser or purchasers. Provided, as conditions precedent to consummating such a negotiated sale, the governing body shall:

1. Approve the negotiated sale by an affirmative vote of at least three-fourths (3/4) of all the members of such governing body; and

2. Receive the written opinion of bond counsel that such negotiated sale is in accordance with the terms and provisions of the Oklahoma Municipal Utility Revenue Bond Act, and contravenes no other provisions of applicable law.

In any event, the discount of the negotiated sale of the obligations shall not exceed four percent (4%) and the interest rate on any maturity of the obligations shall not exceed fourteen percent (14%) per annum.

- I. It shall be a further condition to the issuance and sale of revenue obligations hereunder that the municipality establish and maintain for the particular utility or utilities providing revenues to repay the obligations a separate system of accounting for such revenues in order that the governing body of the municipality may accurately and reliably determine from year to year the sufficiency of rates, charges and amounts of revenues derived from such

utilities and available to pay debt service and other costs related to the obligations. Such enterprise accounts shall be clearly identified in the annual audits of the municipality.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-158 of Title 11, unless there is created a duplication in numbering, reads as follows:

The Attorney General, acting as Bond Commissioner pursuant to Section 11 of Title 62 of the Oklahoma Statutes, shall review and approve a transcript of proceedings relating to the approval, issuance and sale of obligations under the Oklahoma Municipal Utility Revenue Bond Act. The Bond Commissioner shall prepare such forms and prescribe such methods of procedure as the Bond Commissioner deems necessary under the laws of the state in order to establish a uniform method of proceeding in such transactions. Provided, the Bond Commissioner shall proceed forthwith to develop such forms and procedures and cause them to be published not later than one hundred twenty (120) days after the effective date of this act, and thereafter, may revise, amend or modify such forms and procedures from time to time. Provided further, the forms and procedures developed by the Bond Commissioner may be augmented by such other forms and documents as bond counsel to the transaction deems necessary and advisable to facilitate the approval, issuance, sale and delivery of the obligations and to assure that interest on the obligations are not includable in the taxable income of the holder thereof for purposes of federal and Oklahoma income taxation. It shall be the further duty of the Bond Commissioner to examine into and pass upon any obligations issued under the Oklahoma Municipal Utility Revenue Bond Act, and such obligations, when declared by the certificate of said Bond Commissioner to be issued in accordance with the forms of procedure so provided shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction of the same

within thirty (30) days from the date of the approval thereof by the Bond Commissioner. No obligation hereafter issued by any municipality under the Oklahoma Municipal Utility Revenue Bond Act shall be valid without the certificate of the Bond Commissioner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-159 of Title 11, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall authorize general obligation bonds without a vote of the citizens of the municipality.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-160 of Title 11, unless there is created a duplication in numbering, reads as follows:

The interest on any obligations issued under the provisions of the Oklahoma Municipal Utility Revenue Bond Act shall not be includable in the taxable income of the holder thereof for purposes of the Oklahoma Income Tax Act.

SECTION 12. This act shall become effective July 1, 1992.

Passed the House of Representatives the 3rd day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate