

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 443

BY: KERR of the SENATE

and

KINNAMON of the HOUSE

COMMITTEE SUBSTITUTE

AN ACT RELATING TO PUBLIC FINANCE AND STATE

GOVERNMENT; AMENDING 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),
WHICH RELATES TO THE BOND OVERSIGHT COMMISSIONS,
SECTION 54, CHAPTER 222, O.S.L. 1987, AS AMENDED BY
SECTION 5, CHAPTER 374, O.S.L. 1989, SECTION 66,
CHAPTER 222, O.S.L. 1987, AND SECTIONS 9, 12 AND
13, CHAPTER 342, O.S.L. 1990 (74 O.S. SUPP. 1990,
SECTIONS 5062.6, 5062.18, 5063.4a, 5063.4d AND
5063.4e), WHICH RELATE TO THE OKLAHOMA DEVELOPMENT
FINANCE AUTHORITY AND THE CREDIT ENHANCEMENT
RESERVE FUND; DECLARING CERTAIN ACTIONS UPHELD UPON
FINDING OF CERTAIN UNCONSTITUTIONALITY AND CERTAIN
OBLIGATIONS CONFIRMED, RATIFIED, VALIDATED AND
INCONTESTABLE; PROVIDING FOR STIPEND FOR APPOINTIVE
MEMBERS OF THE OKLAHOMA DEVELOPMENT FINANCE
AUTHORITY BOARD OF DIRECTORS AND LIMITING AMOUNT;
CHANGING AUTHORITY FROM WHOM CERTAIN CONSENT MUST
BE OBTAINED; CLARIFYING STATUTORY REFERENCE;
MODIFYING CERTAIN DATE; AUTHORIZING OKLAHOMA

DEVELOPMENT FINANCE AUTHORITY TO CREDIT ENHANCE AND SECURE CERTAIN PAYMENTS ON CERTAIN OBLIGATIONS; CLARIFYING LANGUAGE; REQUIRING BORROWER TO OBTAIN CERTAIN PERCENT OF PROJECT COST FROM OTHER LENDER AND MODIFYING TERMS OF SUCH LOAN; CLARIFYING LANGUAGE; MAKING EXCEPTION TO CERTAIN LIMITATIONS TO PROVIDE CASH RESERVE OR OTHER SECURITY FOR DEBT SERVICE; MODIFYING COINSURANCE PROVISIONS TO ALLOW COINSURANCE ON PERCENTAGE OF EACH LOAN IN POOL AND ON NONPOOLED LOANS; AUTHORIZING AUTHORITY TO INCREASE AMOUNTS OF CERTAIN CREDIT ENHANCEMENT, BONDS AND LOANS TO PROVIDE DEBT SERVICE FOR CERTAIN BONDS AND LIMITING AMOUNT OF INCREASE; REPEALING SECTION 90, CHAPTER 222, O.S.L. 1987 (74 O.S. SUPP. 1990, SECTION 5063.20), WHICH RELATES TO CERTAIN RIGHTS ARISING UNDER THE CREDIT ENHANCEMENT RESERVE FUND ACT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

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 54, Chapter 222, O.S.L. 1987, as amended by Section 5, Chapter 374, O.S.L. 1989 (74 O.S. Supp. 1990, Section 5062.6), is amended to read as follows:

Section 5062.6 A. Upon certification by the Governor of a public trust as qualifying to become the Oklahoma Development Finance Authority, the board of trustees of such trust shall become the governing board of the Oklahoma Development Finance Authority with the addition of two (2) other persons. One person shall be the Director of the Department of Commerce who shall serve ex officio and who shall be a voting member of the board of the Authority. The Governor shall appoint one (1) person, qualified by outstanding knowledge, leadership and experience in the field of finance, for a term of office of two (2) years subject to the advice and consent of the Senate. Any vacancy in a position upon the board occupied by a member of the qualifying public trust or the gubernatorial appointee shall be filled by appointment of the Governor subject to the advice and consent of the Senate. Any position upon the board filled by appointment of the Governor shall be for a term equal to the term of office of the member whose term has expired. Appointments shall be made on the basis of outstanding knowledge, leadership and experience in the respective field of the appointee. If a vacancy

occurs when the Senate is not in session, the Governor may appoint a member who shall exercise full powers until confirmation or rejection of the appointment by the Senate. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. The governing and administrative powers of the Oklahoma Development Finance Authority shall be vested in the governing board as provided by this section. ~~No member shall receive compensation for his service on the board directly or indirectly; provided that~~ Each appointive member shall receive a Three Hundred Dollar (\$300.00) stipend for each board meeting attended, not to exceed Three Thousand Six Hundred Dollars (\$3,600.00) in any twelve-month period, and each appointive member may receive reimbursement for expenses pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of this title.

B. Members shall annually elect from among the membership a chairman, vice-chairman, secretary and treasurer, and may elect an assistant secretary or assistant secretaries who need not be members of the board. Four members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least four members shall be required for the approval of any resolution authorizing the issuance of any bonds or approving any loan transaction pursuant to Section 5062.1 et seq. of this title.

C. No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular, special, or emergency meeting and shall take effect upon the date the chairman or vice-chairman certifies the action of the Authority by affixing his signature to the

resolution unless some other date is otherwise provided in the resolution.

D. The board shall appoint and employ a president. The board shall establish criteria for selecting the president taking into consideration national standards for similar positions in similar institutions in other states. The search for a president shall be conducted pursuant to the criteria so established. The president shall employ and terminate such other officers and employees as designated by the board. The board may delegate to its president, its members and/or officers of the Authority such duties as it deems necessary or convenient to carry out the purposes of this act.

E. ~~No~~ Except as otherwise provided by law, no part of the funds of the Authority shall inure to the benefit of, or be distributed to its employees, officers, or board of directors, except that the Authority shall be authorized and empowered to pay its employees and agents reasonable compensation and benefits.

F. The meetings of the board of directors of the Oklahoma Development Finance Authority shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. Any information submitted to or compiled by the Oklahoma Development Finance Authority with respect to the marketing plans, financial statements, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the board of directors.

G. The Authority shall assist minority businesses in obtaining financial assistance. The terms and conditions of loans or other means of financial assistance, including the charges for interest

and other services, will be consistent with the provisions of this act. The Authority shall solicit proposed minority business ventures for review and analysis.

H. The Authority shall adopt, publish and submit by January 1 of each year to Oklahoma Futures, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, appropriate administrative policies, including but not limited to policies governing the classification, employment, promotion, suspension, disciplinary action or dismissal of Authority employees and reimbursement of employees. All actions governed by said administrative policies shall be examined annually in the independent audit required by this act. The Authority shall not be subject to state laws regulating the classification, employment, promotion, suspension, disciplinary action or dismissal of state employees. Except as otherwise provided by this act, the Oklahoma Development Finance Authority shall be subject to the provisions of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title. The Oklahoma Development Finance Authority shall be subject to the provisions of law governing administrative procedures pursuant to Title 75 of the Oklahoma Statutes.

I. If a member of the board of directors, officer, agent or employee of the Oklahoma Development Finance Authority has any direct or any indirect interest in any approval, contract or agreement upon which the member, officer, agent or employee may be called upon to act or vote, the board member, officer, agent or employee shall disclose the same to the secretary of the Authority prior to the taking of final action by the Authority concerning such contract or agreement and shall so disclose the nature and extent of such interest and his or her acquisition thereof, which disclosure shall be publicly acknowledged by the Authority and entered upon the minutes of the Authority. If a board member, officer, agent or employee holds such an interest, he or she shall refrain from any

further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other board members, officers, agents or employees concerning said contract or agreement. Employees of the Oklahoma Development Finance Authority shall be subject to the provisions of Section 4241 of this title.

Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office, or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the Authority.

Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the Authority.

SECTION 3. AMENDATORY Section 66, Chapter 222, O.S.L. 1987 (74 O.S. Supp. 1990, Section 5062.18), is amended to read as follows:

Section 5062.18 Notwithstanding any provision herein to the contrary, the Oklahoma Development Finance Authority shall not participate in financing programs nor issue bonds which compete with or are similar in nature to those obligations authorized for issuance by the Oklahoma Turnpike Authority, the Oklahoma Housing Finance Agency, the Oklahoma Water Resources Board, the Grand River Dam Authority, the Oklahoma Student Loan Authority and the Oklahoma Municipal Power Authority, without the prior consent of ~~said~~ authorities the Executive and Legislative Bond Oversight Commissions.

SECTION 4. 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 ~~16~~ 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 5. 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 6. 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 7. 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 8. REPEALER Section 90, Chapter 222, O.S.L. 1987 (74 O.S. Supp. 1990, Section 5063.20), is hereby repealed.

SECTION 9. 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.

43-1-887

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