

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 2177

By: McCorkell

COMMITTEE SUBSTITUTE

An Act relating to public finance; amending 62 O.S. 1991, Sections 695.7, 695.8, as amended by Section 47, Chapter 275, O.S.L. 1993, 695.8a and 695.9 (62 O.S. Supp. 1993, Section 695.8), which relate to the Oklahoma Bond Oversight and Reform Act; requiring local governmental entities to submit certain requests for proposals; authorizing State Bond Advisor to provide advice and assistance; prohibiting inducements; requiring evidence of compliance; authorizing rules; prescribing rules to be adopted according to certain act; re-creating the Bond Oversight Revolving Fund; modifying procedures with respect to certain filing of information; modifying date as of which certain information is required to be filed; repealing 62 O.S. 1991, Section 695.8b, which relates to the Bond Oversight Revolving Fund; repealing 62 O.S. 1991, Section 695.10, which relates to reporting under the Oklahoma Bond Oversight and Reform Act; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.7, is amended to read as follows:

Section 695.7 A. The Commissions jointly shall engage the services of a person knowledgeable in the current state of the art of national and international standards for the issuance of obligations by governmental entities and experienced in the negotiation of fees for various goods and services requisite to or deemed desirable in the issuance of such obligations as well as the negotiation of other matters essential to provide the best current price and terms of the issuance of such obligations for

the benefit of Oklahoma firms, farms, individuals and local communities, with said consultant having the title "Oklahoma State Bond Advisor". The Commissions shall conduct a national search in seeking requests for proposals for the position of Oklahoma State Bond Advisor. The person selected as the Oklahoma State Bond Advisor shall be approved by an affirmative vote of the Executive Commission and the Legislative Commission at a joint meeting of the Commissions. The Oklahoma State Bond Advisor may be removed upon an affirmative vote of the Executive Commission and the Legislative Commission at a joint meeting of the Commissions.

B. The Oklahoma State Bond Advisor shall be an independent position within the ~~Office of Public Affairs~~ Department of Central Services. The Oklahoma State Bond Advisor may employ the necessary staff to carry out the duties of the Bond Advisor and the duties of the Commissions, with approval of the Commissions.

C. Prior to engaging the services of underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee, paying agent or in any fiduciary capacity in connection with any program, indenture or general resolution of the State Governmental Entity, or any other experts, except as provided in Section 5062.8 of Title 74 of the Oklahoma Statutes, the State Governmental Entity shall request proposals for such services from a plurality of persons engaged in the particular activity for such services and the selection of such persons shall be made on the basis of the response to the request which is the most economical and will provide competent service which furthers the best interest of the State Governmental Entity and the state. In negotiating requests for proposals to engage such services, the State Governmental Entity shall seek the advice and assistance of the Oklahoma State Bond Advisor. Under no circumstances shall proprietary inducements be granted. The Oklahoma State Bond Advisor shall provide assistance and advice to State Governmental Entities with respect to the issuance of obligations by said State Governmental Entities, review, negotiate, and approve or disapprove the fees and expenses for goods and services requisite to or deemed desirable in the

issuance of State Governmental Entity obligations and represent the interests of the state before rating agencies and credit enhancement providers.

The provisions of this subsection shall apply to any Local Governmental Entity that proposes to issue obligations to fund capital additions or expenditures which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state when such payment is a direct and expressed pledge made by the state for the retirement of debt by a Local Governmental Entity. Provided, funds which are collected by the state for distribution to a Local Governmental Entity or are appropriated or dedicated by the state to a Local Governmental Entity without the expressed purpose of retiring debt of said Local Governmental Entity shall not constitute a pledge as provided in this subsection.

D. Prior to engaging the services of underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee, paying agent or in any fiduciary capacity in connection with any program, indenture or general resolution of the Local Governmental Entity, the Local Governmental Entity shall request proposals for such services from no fewer than three persons or firms engaged in the particular activity for such services and the selection of such persons shall be made on the basis of the response to the request which is the most economical and will provide competent service which furthers the best interest of the Local Governmental Entity. In negotiating requests for proposals to engage such services, the Local Governmental Entity may seek the advice and assistance of the Oklahoma State Bond Advisor. Under no circumstances shall proprietary inducements be granted. Local Governmental Entities shall provide written evidence of compliance with provisions of this subsection in a manner determined by the Commissions.

E. The Oklahoma State Bond Advisor shall serve as an advisor to the Governor and to the Legislature with respect to issuance of indebtedness reviewed by the Commissions and shall prepare an

annual report to be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives as of January 15 each year. The report shall contain a summary of the issuance of indebtedness by State Governmental Entities and Local Governmental Entities during the preceding year and such other information as the State Bond Advisor may be required to submit or as may be relevant. The State Bond Advisor shall assist Oklahoma Futures with respect to information, advice or assistance as may be required.

~~E.~~ F. The Oklahoma State Bond Advisor or any member of the immediate family of the Oklahoma State Bond Advisor shall not have any direct or indirect financial or contractual relationship with any firm or corporation or any officer, partner or principal stockholder of any firm or corporation directly involved in public finance.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 695.8, as amended by Section 47, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 695.8), is amended to read as follows:

Section 695.8 A. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall:

1. Make determinations as to whether the purposes for which obligations proposed to be issued by a state governmental entity are for the furtherance and accomplishment of authorized and proper public functions or purposes of the state or of any county or municipality, as specified in the statutes governing public trusts organized pursuant to Title 60 of the Oklahoma Statutes;
2. Review proposed issuance of debt by State Governmental Entities for compliance with any applicable provisions of federal, state or other laws;
3. Review proposed issuances of obligations to fund capital additions or expenditures by local governmental entities which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state, for compliance with any applicable provisions of federal, state or other laws, when such payment is a direct and

expressed pledge for the then current fiscal year made by the state for the retirement of debt by a local governmental entity. Provided, funds which are collected by the state for distribution to a local governmental entity or are appropriated or dedicated by the state to a local governmental entity without the expressed purpose of retiring debt of said local governmental entity shall not constitute a pledge as provided in this paragraph;

4. Review the findings of the Program Development and Credit Review Committee to determine if the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority adequately and sufficiently fulfill the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes, provided such provision shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to the effective date of this act; and approve or disapprove any bonds or indebtedness being issued by the Oklahoma Development Finance Authority to the extent said bonds or indebtedness are enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes;

5. Review on an annual basis the portfolio of investments made pursuant to the Quality Jobs Investment Program supported by the Credit Enhancement Reserve Fund as provided in Section 44 of this act to determine if the Program adequately and sufficiently fulfills the intents and purposes of the Oklahoma Quality Jobs Program Act; ~~and~~

6. Adopt, amend and repeal rules and regulations to regulate affairs of the Commissions and to implement the powers and purposes of the Commissions; and

7. Prescribe by rule, adopted according to requirements imposed by the Oklahoma Administrative Procedures Act, penalties for failure to comply with requirements imposed upon State Governmental Issuers and Local Governmental Issuers by the

provisions of the Oklahoma Bond Oversight and Reform Act and rules promulgated pursuant to such act.

B. The Commissions may establish budgets in order to fulfill their duties pursuant to Section 695.1 et seq. of this title and shall be authorized to charge and collect a fee, in accordance with the rules and regulations of the Commissions, derived from proceeds of bond issues approved by the Commissions.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 695.8a, is amended to read as follows:

Section 695.8a There is hereby ~~created~~ re-created in the State Treasury a revolving fund for the Office of Public Affairs, to be designated the "Bond Oversight Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees collected by the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission as authorized by Section 695.8 of Title 62 of the Oklahoma Statutes and any other monies provided for by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of Public Affairs for expenses related to the Oklahoma Bond Oversight and Reform Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 4. AMENDATORY 62 O.S. 1991, Section 695.9, is amended to read as follows:

Section 695.9 A. No State Governmental Entity shall issue any obligations unless such obligations have been approved by the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission as provided for in Section 695.8 of this title; provided, however, that in no event shall the Commissions' approval be required for the issuance of any obligations pursuant to a remarketing or a change in interest rate or maturity under the terms of indentures or agreements securing obligations heretofore issued prior to July 1, 1987, or pursuant to the provisions of Section 695.1 et seq. of this title.

B. 1. ~~Within ten (10) days following any formal preliminary action with~~ With respect to any financing proposed to be obtained through the issuance of its obligations, any State Governmental Entity shall file with the Executive Commission and the Legislative Commission ~~on the same day~~ a written description of the nature, need and purpose of such proposed financing. The Commissions shall review the description of the proposed financing in order to either approve or disapprove the purpose to be served by the issuance of said State Governmental Entity obligations and for compliance with any applicable provisions of federal, state or other laws. The review as to purpose shall be strictly limited to the determination provided for in Section 695.8 of this title.

2. With respect to bonds or indebtedness proposed to be issued by the Oklahoma Development Finance Authority which will be enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, the Commissions shall review the description of such proposed financing in accordance with paragraph 1 of this subsection and additionally shall approve or disapprove the proposed financing on a determination of sufficient compliance with the Rules Regarding the Administration of the Credit Enhancement Reserve Fund as implemented by the Oklahoma Development Finance Authority. Such determinations by the Commissions shall be based on a written report prepared for and provided to the Commissions by the Program Development and Credit Review Committee as provided in Section 5062.6a of Title 74 of the Oklahoma Statutes, provided the Commissions shall not be bound to follow the conclusions reached by the committee in such reports. Provided, the provisions of this paragraph shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to June 9, 1990.

All orders issued by the Commissions approving or disapproving bonds or indebtedness enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act shall be final and shall not be subject to any type of appeal.

3. The approval provided for in paragraph 1 of this subsection shall expire one hundred eighty (180) days after such

approval. Provided, if such approval expires, nothing shall prevent the State Governmental Entity from refiling with the Commissions for approval of such financing and, if granted, any one subsequent approval of such financing shall be valid for a period, not to exceed one hundred eighty (180) days, as determined by the Commissions.

4. In the event there is a substantial change in the nature or purpose of a proposed financing after approval by the Commissions, the prior approval shall be void and the State Governmental Entity shall be required to seek approval from the Commissions in the manner provided in paragraph 1 of this subsection.

C. Local Governmental Entities that propose to issue obligations to fund capital additions or expenditures which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state when such payment is a direct and expressed pledge made by the state for the retirement of debt by a Local Governmental Entity shall be governed by the provisions of subsections A and B of this section. Provided, funds which are collected by the state for distribution to a Local Governmental Entity or are appropriated or dedicated by the state to a Local Governmental Entity without the expressed purpose of retiring debt of said Local Governmental Entity shall not constitute a pledge as provided in this subsection.

D. Except for the entities specified in subsection C of this section, Local Governmental Entities, within ten (10) days following ~~any formal preliminary action with respect to any financing proposed to be obtained through the issuance of its obligations,~~ the date funds become available to the issuer from the sale of any obligation, shall file with the Executive Commission and the Legislative Commission a ~~written description of the nature, need and purpose of the proposed financing~~ copy of the official statement or notice of sale and any other information

concerning the proposed financing required by either of the Commissions.

E. Upon the request of a Local Governmental Entity, the State Bond Advisor may provide advice and assistance to the Local Governmental Entity with respect to the issuance of obligations. The State Bond Advisor may assess reasonable fees for such services.

SECTION 5. REPEALER 62 O.S. 1991, Section 695.8b, is hereby repealed.

SECTION 6. REPEALER 62 O.S. 1991, Section 695.10, is hereby repealed.

SECTION 7. This act shall become effective July 1, 1994.

SECTION 8. 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.

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