

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1075

By: Voskuhl, Braddock,
Collins, Covey, Ervin,
Frame, Hutchison, Kirby,
Leist, McCarter,
Ostrander, Plunk, Pope
(Clay), Smith (Dale),
Stites, Turner and Weaver
of the House

and

Shurden of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public finance; amending Sections 7, 9 and 11, Chapter 193, O.S.L. 1996 (62 O.S. Supp. 1996, Sections 2007, 2009 and 2011), which relate to the Rural Economic Action Plan Act of 1996; authorizing payment of funds to counties for benefit of unincorporated areas; requiring county to make request; requiring evaluation of priorities by county; providing for immunity from certain liability based upon expenditure of funds; deleting requirement for filing of certain plan; conforming references; amending 62 O.S. 1991, Section 695.24, as last amended by Section 2, Chapter 342, O.S.L. 1996 (62 O.S. Supp. 1996, Section 695.24), which relates to the Private Activity Bond Allocation Act; providing for certain amount of Local Issuer Pool to be available for single family housing; providing for allocation to certain public trusts; modifying provisions related to Consolidated Pool; amending Section 61 of Enrolled Senate Bill No. 160 of the 1st Session of the 46th Oklahoma Legislature; modifying appropriation to Oklahoma Department of Transportation; providing for appropriation to Rural Economic Action Plan Fund; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 7, Chapter 193, O.S.L. 1996 (62 O.S. Supp. 1996, Section 2007), is amended to read as follows:

Section 2007. A. A voluntary association of Oklahoma local governmental jurisdictions or another legal entity, including a public trust or a nonprofit corporation or other entity which performs functions for the benefit of or which exists for the primary benefit of Oklahoma local governmental jurisdictions and which is not described in subsection B of this section, shall be eligible to obtain funding for rural economic development projects as authorized by subsection B of Section ~~6~~ 2006 of this ~~act~~ title.

B. A voluntary association of Oklahoma local governmental jurisdictions containing at least one municipality with a population in excess of three hundred fifty thousand (350,000) persons according to the latest Federal Decennial Census, shall be eligible to obtain funding as authorized by subsection C of Section ~~6~~ 2006 of this ~~act~~ title.

C. The entities described in subsection A or B of this section and which are eligible for any funds authorized by Section ~~6~~ 2006 of this ~~act~~ title shall be prohibited from making expenditures on behalf of or from making payment directly to any city or town with a population in excess of seven thousand (7,000) persons using any funds deposited to the Rural Economic Action Plan Fund created by Section ~~6~~ 2006 of this ~~act~~ title.

D. An organization described in subsection A or B of this section shall be authorized to make payment of funds obtained pursuant to Section 2006 of this title directly to a county if the funds are used for the benefit of an unincorporated area located within the county to which payment is made. After the county has provided a request to an organization described in subsection A or B of this section for funds to benefit an unincorporated area of the county, together with a statement that the county has conducted a review of the needs of unincorporated areas located within the county and that the funding requested is consistent with the evaluation of priorities for funds by the county, the funds requested may be paid to the county. Any funds paid to a

county pursuant to the provisions of this subsection shall be expended by the county exclusively for the purpose identified in the request.

E. No county to which funds are paid pursuant to the provisions of subsection D of this section shall be liable to any person or other legal entity for damages arising out of any condition, act, omission or other cause alleged to have arisen as a result of a project upon which funds expended pursuant to the authority of subsection D of this section were paid to the county.

SECTION 2. AMENDATORY Section 9, Chapter 193, O.S.L. 1996 (62 O.S. Supp. 1996, Section 2009), is amended to read as follows:

Section 2009. A. In order for an eligible entity to obtain funds provided for by Section ~~6~~ 2006 of this ~~act~~ title, the entity shall file the organizational plan required by Section ~~8~~ 2008 of this ~~act~~ title with the State Auditor and Inspector.

B. In order to be filed, the plan shall have first been approved by an affirmative vote of two-thirds (2/3) of the governing board of an entity described by subsection A or B of Section ~~7~~ 2007 of this ~~act~~ title. The vote shall be memorialized in a document, executed under oath, that the record of the vote is a true and accurate account of the proceedings conducted by the governing board to be filed with the State Auditor and Inspector.

~~C. The plan shall be filed for a period of at least six (6) months prior to the date as of which any funds are requested. No funds provided for by Section 6 of this act shall be paid to an entity which does not have an economic development plan on file as required by this section. The provisions of this subsection shall not restrict the ability of an eligible entity to obtain funds for planning and the funds authorized for use in planning may be distributed prior to the expiration of the six-month period.~~

~~D. The plan shall consist of an evaluation of the financial needs and priorities of the political subdivisions under the jurisdiction of the entity for at least one (1) fiscal year following the date as of which the plan is filed.~~

SECTION 3. AMENDATORY Section 11, Chapter 193, O.S.L. 1996 (62 O.S. Supp. 1996, Section 2011), is amended to read as follows:

Section 2011. A. Except as otherwise provided by subsection C of this section, the funds available pursuant to the provisions of Section ~~6~~ 2006 of this ~~act~~ title shall not be used to pay any administrative expenses of the entity requesting the funds. The State Auditor and Inspector shall conduct an annual audit to determine compliance with the provisions of this section. Misuse of funds by an entity shall disqualify the entity from further funding for a period of one (1) year from the date as of which any report by the State Auditor and Inspector is issued revealing a violation of the requirements of this section.

B. Except for funds authorized by subsection C of this section, an entity which violates the provisions of this section shall be liable to the State of Oklahoma for treble the amount of funds identified as having been impermissibly used for the payment or reimbursement of administrative expenses. The payment shall be made to the State Auditor and Inspector for deposit in the Rural Economic Action Plan Fund and such funds shall become available for distribution as otherwise provided by this act except that no such funds shall be paid to an entity which has been required to make the treble damage payment.

C. Upon verification by the State Auditor and Inspector's office that an entity is qualified to receive funds for a purpose authorized by this act, the entity shall be eligible for an initial planning expenditure payment of not to exceed five percent (5%) of the amount contained in the account created for the entity pursuant to Section ~~6~~ 2006 of this ~~act~~ title. ~~After an entity files the economic development plan required by Section 9 of this act and receives the initial planning expenditure authorized by this subsection, the balance of funds remaining in the account shall be made available to the entity on a project by project basis as otherwise required by this act.~~

SECTION 4. AMENDATORY 62 O.S. 1991, Section 695.24, as last amended by Section 2, Chapter 342, O.S.L. 1996 (62 O.S. Supp. 1996, Section 695.24), is amended to read as follows:

Section 695.24 A. 1. Twenty-five percent (25%) of the state ceiling shall be reserved and placed in a pool to be designated the Qualified Small Issue Pool. Of the amount prescribed by this paragraph, twenty-five percent (25%) shall be reserved for issuers proposing to provide financing for small business equipment. The amount so reserved shall be designated as the Small Business Equipment Pool and shall be available to facilitate either a single issuer or multiple issuers in creating a source of capital at competitive interest rates for the purpose of enabling qualified small businesses to obtain equipment for the formation or expansion of a business enterprise. No applicant for an allocation of the portion of the state ceiling reserved for the Small Business Equipment Pool shall receive an allocation in excess of Five Million Dollars (\$5,000,000.00) for any calendar year.

The amounts allocated from the Small Business Equipment Pool may be used by the issuer to facilitate acquisition of needed equipment by small businesses based upon such criteria as may be established by the issuer.

As used in this paragraph, "small business" means any legally recognized entity making sales of goods or services for profit:

- a. having less than one hundred (100) employees as of the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated, and
- b. having gross sales or gross revenue not in excess of Five Million Dollars (\$5,000,000.00) for any fiscal year of the business entity prior to the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated.

As used in this paragraph, "equipment" means a device, tool, apparatus, machine or combination of such items used by a small business for the production of income.

2. For the period commencing January 1 through September 1 of each calendar year, the Qualified Small Issue Pool shall be allocated to qualified small issue bond projects undertaken by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis. For the period commencing January 1 through September 1 of each calendar year, the Small Business Equipment Pool shall be allocated to qualified issuers. Allocation will be available to issuers on a first-come, first-serve basis.

B. 1. Ten percent (10%) of the state ceiling shall be reserved and placed in a pool to be designated the Beginning Agricultural Producer and Exempt Facility Pools.

2. For the period commencing January 1 through September 1 of each calendar year, the Beginning Agricultural Producer Pool shall be allocated pursuant to the criteria established in Section 5063.23 of Title 74 of the Oklahoma Statutes according to a ratio of fifty percent (50%) of the total amount allocated for the combined purposes, not to exceed Five Million Dollars (\$5,000,000.00), the remainder to be allocated to exempt facility bonds issued by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis.

C. Five percent (5%) of the state ceiling shall be reserved for facilities owned or operated by a business entity which:

1. Has not been legally organized to do business for more than one (1) year prior to the date as of which operations begin at a food processing facility located within the state;

2. Has an annual gross direct payroll which does not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00); and

3. Is engaged in food processing resulting in a final product produced at the facility which consists of at least ninety percent (90%), exclusive of packaging, of agricultural or livestock inputs originating from within the State of Oklahoma. The actual cost incurred by the processor, exclusive of packaging, shall be used

for purposes of determining the content of the final product and the processor shall be required to document both the content of the final product for which a reservation of the state ceiling is claimed and the source of the input. As used in this paragraph:

- a. "agricultural input" means severed crops, including, but not limited to, wheat, oats, barley, corn, cotton and rye, peanuts, pecans and other nuts, vegetables, fruits, flowers, herbs, spices, trees, shrubs, and similar flowering or nonflowering woody plants, exclusive of any plant or substance that is illegal to cultivate, and
- b. "livestock input" means cattle, horses, sheep, goats, swine, ratite, fish, fowl, reptiles or any other animal or insect raised or bred for sale or any material produced by an animal or insect for sale.

D. 1. Twenty percent (20%) of the state ceiling shall be reserved and placed in a pool to be designated the Student Loan Pool.

Provided, for any given year the amount of state ceiling reserved shall be reduced by the amount of any existing carryforward issuance authority available to student loan bond issuers.

2. For the period commencing January 1 through September 1 of each calendar year, the Student Loan Pool shall be allocated to qualified student loan bonds issued by eligible state issuers. Allocations will be available to issuers on a first-come, first-serve basis.

E. 1. From the balance of the state ceiling, thirty percent (30%) shall be reserved and placed in a pool to be designated the State Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the State Issuer Pool shall be allocated to those projects undertaken by state issuers on a first-come, first-serve basis. Provided, no single state issuer or project shall receive an allocation in excess of Twenty Million Dollars (\$20,000,000.00) from the State Issuer Pool.

2. Notwithstanding the provisions of this section, a state issuer specifically limited in jurisdiction to one county shall be treated as a local issuer for the purposes of allocation.

F. From the balance of the state ceiling, seventy percent (70%) shall be reserved and placed in a pool to be designated the Local Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the Local Issuer Pool shall be allocated first, Fifteen Million Dollars (\$15,000,000.00) to each public trust created to provide single family housing having a county with a population in excess of three hundred thousand (300,000) as its sole beneficiary and which had single family housing revenue bonds outstanding on January 1, 1981, or pro rata if the pool contains less than such amounts, then to those projects undertaken by local issuers on a first-come, first-serve basis. Provided, except for local issuers which have a population in excess of three hundred thousand (300,000), no single local issuer or project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00) from the Local Issuer Pool. No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00) from the Local Issuer Pool. No more than two fifteen-million-dollar allocations shall be made to local issuers in a calendar year from the Local Issuer Pool.

G. Allocations of the state ceiling for the period commencing January 1 through September 1 of each calendar year for qualified small issue bonds and qualified student loan bonds may be made only from the respective pools reserved for these types of private activity bonds. Provided, small issue bonds may be funded from the State Issuer Pool or the Local Issuer Pool at such time as all the issuance authority in the Qualified Small Issue Pool has been allocated. Allocations of the state ceiling for the same period for exempt facility bonds may be made from the Exempt Facility Pool, the State Issuer Pool and the Local Issuer Pool; provided, no single issuer or project during any calendar year shall receive an allocation in excess of Twenty-five Million Dollars

(\$25,000,000.00) from the three pools combined. The state ceiling for each calendar year shall be allocated within the categories set forth in subsections A, B, C, D, E and F of this section to all private activity bonds, as follows:

1. Except as hereinafter provided, the state ceiling shall be allocated in the order in which confirmations are issued;

2. The State Bond Advisor shall issue confirmations in the order in which fully and properly completed applications for state ceiling allocation are received. The State Bond Advisor shall have the limited authority to defer or deny confirmation on applications for state ceiling allocation which appear to be incomplete or premature based upon information submitted or which fail to show demand for funds pursuant to subsections F and G of Section 695.25 of this title; and

3. The State Bond Advisor shall have no discretionary control regarding the issuance of confirmations, except as specifically provided in the Oklahoma Private Activity Bond Allocation Act.

In the event a confirmation or application is denied, the State Bond Advisor, within five (5) business days following such denial, shall send written notice of such denial to the applicant together with a brief recital of the reason therefor.

H. On September 2 of each calendar year, nonallocated sums remaining in the Qualified Small Issue Pool, the Small Business Equipment Pool, the Beginning Agricultural Producer Pool, the Exempt Facility Pool, the Student Loan Pool, the State Issuer Pool and the Local Issuer Pool shall be consolidated into the Consolidated Pool. All local issuers and state issuers shall be entitled to obtain allocations from the Consolidated Pool for any private activity bond or mortgage credit certificate program based on the following system:

1. Allocations shall be made first, to the extent not previously allocated as provided in subsection F of this section, to issuers based on the chronological order of completed applications received prior to September 2 of each calendar year who have not received an allocation; provided, seventy-five percent (75%) of the Consolidated Pool shall be allocated first to

issuers in this category; provided further, except for issuers which have a population in excess of three hundred thousand (300,000), no single issuer or project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00). No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00);

2. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of applications received prior to September 2 of each calendar year who received a partial allocation of a requested allocation, provided the initial allocation was less than the lesser of fifty percent (50%) of the requested allocation or Ten Million Dollars (\$10,000,000.00); provided further, the total amount of allocations from the Consolidated Pool and all other pools shall not exceed Ten Million Dollars (\$10,000,000.00); and

3. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of completed applications received from September 2 through November 30 of each calendar year.

SECTION 5. AMENDATORY Section 61 of Enrolled Senate Bill No. 160 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 61. There is hereby appropriated to the ~~Department of Transportation~~ Rural Economic Action Plan Fund of the State Treasury from any monies not otherwise appropriated from the General Revenue Fund of the State Treasury for the fiscal year ending June 30, 1998, the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) or so much thereof as may be necessary to implement the provisions of Section ~~2005~~ 2004 of Title 62 of the Oklahoma Statutes.

SECTION 6. Sections 1, 2, 3 and 5 of this act shall become effective July 1, 1997.

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.

46-1-7609

MAH