

SHORT TITLE: Public finance; relating to bond oversight; empowering Bond Oversight Commissions to delegate certain authority to Oklahoma State Bond Advisor; authorizing certain extension. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1082

By: Fisher

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 1991, Sections 695.7, as amended by Section 1, Chapter 413, O.S.L. 1997, 695.8, as last amended by Section 2, Chapter 413, O.S.L. 1997, 695.9, as amended by Section 25, Chapter 322, O.S.L. 1994 and 695.11 (62 O.S. Supp. 1997, Sections 695.7, 695.8 and 695.9), which relate to bond oversight; clarifying and updating language; granting Bond Oversight Commissions power to delegate review and approval of certain projects and loans to Oklahoma State Bond Advisor; allowing Oklahoma State Bond Advisor to refer these applications to Commissions at Bond Advisor's discretion; authorizing approved applicants to request extension of approval period and requiring request be made prior to certain time; allowing applicants failing to request extension to refile with Commissions; and providing an effective date.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.7, as amended by Section 1, Chapter 413, O.S.L. 1997 (62 O.S. Supp. 1997, Section 695.7), is amended to read as follows:

Section 695.7 A. The Executive and Legislative Bond Oversight 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~~ who shall have 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. 1. 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.

2. 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. No Local Governmental Entity may utilize a lease, contract, or other agreement with a State Governmental Entity as collateral or security for a proposed Local Governmental Entity obligation unless such obligation has satisfied all of the provisions of this section.

D. 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. 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 last amended by Section 2, Chapter 413, O.S.L. 1997 (62 O.S. Supp. 1997, 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 when there is a lease, contract, or other agreement used as collateral or security under which payments from the state made by any officer, department, board, commission, institution or agency of the state are for the retirement of such obligations. The provisions of this section do not apply to 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 when there is no lease, contract, or other agreement used as collateral or security requiring payments by the state, which will be used to retire obligations of said Local Governmental Entity;

4. a. Except as provided in subparagraph b of this paragraph, 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~~ May 30, 1990; and, except as provided in subparagraph b of this paragraph, 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.
- b. The Bond Oversight Commissions shall not be required to review or approve individual projects or loans under the Small Business Credit Enhancement Program created by Section 5063.4b of Title 74 of the Oklahoma Statutes, or the Oklahoma Beginning Agricultural Producer Pool Act, Section 5063.21 et seq. of Title 74

of the Oklahoma Statutes, but may approve a package of such projects or loans in advance. Each project or loan shall be individually listed in the package and the dollar amount of the project or loan shall be specifically set out together with the total dollar amount involved in the package. The Commissions or the Oklahoma State Bond Advisor may, in their discretion, remove any such individual project or loan from the package submitted, for individual action. Should the Oklahoma Development Finance Authority submit an application to the Commissions for the approval of an obligation or credit enhancement under these two programs, the application shall be deemed approved if not disapproved by the Commissions within forty-five (45) days of filing such an application or, as to an individual project or loan, removed from the submitted package within such forty-five-day period; and

5. Have the power to delegate their review and approval authority under this section to the Oklahoma State Bond Advisor for projects or loans to be funded under the Oklahoma Beginning Agricultural Producer Pool Act when the funding request does not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00); provided, however, the Oklahoma State Bond Advisor may refer, at the Oklahoma State Bond Advisor's discretion, any application for such funding to the Bond Oversight Commissions; 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.

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 695.9, as amended by Section 25, Chapter 322, O.S.L. 1994 (62 O.S. Supp. 1997, 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. 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 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 Except as provided in paragraph 4 of this subsection, 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 refileing 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. Applicants having received approval, as provided for in paragraph 1 of this subsection, may request and the Oklahoma State Bond Advisor may grant, at the Oklahoma State Bond Advisor's discretion, a single one-hundred-and-eighty-day extension. Any request for an extension must be made at least five (5) business days prior to the expiration of the original approval. Applicants failing to request an extension in this manner may refile with the Commissions as provided for in paragraph 3 of this subsection.

5. 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 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 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 Oklahoma State Bond Advisor may provide advice and assistance to the Local Governmental Entity with respect to the issuance of obligations. The Oklahoma State Bond Advisor may assess reasonable fees for such services.

SECTION 4. AMENDATORY 62 O.S. 1991, Section 695.11, is amended to read as follows:

Section 695.11 The provisions of the Oklahoma Central Purchasing Act shall not be applicable to any actions of a State Governmental Entity in regard to the sale and issuance of its obligations, including any contracts and undertakings relating thereto; however such issuance, contracts and undertakings shall be subject to the provisions of this act regarding review or approval of such matters by the Oklahoma State Bond Advisor within the ~~Office of Public Affairs~~ Department of Central Services.

SECTION 5. This act shall become effective November 1, 1998.

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