STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1724 By: Braddock of the House

and

Gumm of the Senate

COMMITTEE SUBSTITUTE

[public finance - Municipal and County Industrial Development Bonds Act - effective date -

emergency]

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

SECTION 1. AMENDATORY 62 O.S. 2001, Section 800, is amended to read as follows:

Section 800. This act shall be known and may be cited as the "Municipal and County ~~Industrial~~ Economic and Community Development Bonds Act".

SECTION 2. AMENDATORY 62 O.S. 2001, Section 801, is amended to read as follows:

Section 801. The Legislature hereby finds and declares that there is a need to establish terms regarding the ~~sale and issuance of bonds authorized to~~ purposes for which bonds may be issued under Section 35 of Article X of the Oklahoma Constitution and terms under which such bonds may be sold and issued by municipalities and counties for ~~industrial~~ economic and community development, which are hereby declared to be essential to the economic well-being of the state.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 802, is amended to read as follows:

Section 802. As used in the Municipal and County ~~Industrial~~ Economic and Community Development Bonds Act:

1. "Amortization" means the reduction of bonded indebtedness by making annual or fiscal year payments of principal and interest sufficient to pay off bonds by their stated maturity;

2. "Annual maturing principal plus interest shall be as nearly equal as practicable throughout the term of the issue" means that the total annual or fiscal year debt service, except for short periods, must be approximately equal for every annual or fiscal period, provided each net annual or fiscal year debt service payment in relation to all other net annual or fiscal year payments must be made within a dollar amount range not to exceed twice the stated denomination of the bonds;

3. "Debt service" means money required, pursuant to the terms of issuance, for payments of principal and interest due on outstanding bonds;

4. "Level principal debt service payments" means the amount of principal retired annually or during a fiscal year with respect to outstanding bonds shall be equal;

5. "Qualified economic or community development purpose" means the use of bond proceeds for the acquisition, construction, development and/or equipping of the following projects or programs:

a. industrial facilities, including manufacturing, maintenance, servicing, warehouse, wholesale distribution, and transportation facilities,

b. tourism facilities, including recreation or entertainment facilities, theme parks, cultural and historic sites,

c. sports facilities, including arenas, stadiums, ballparks, and golf courses,

d. agricultural facilities, including grain elevators, cotton gins, compresses, livestock barns, and other commodity processing facilities,

e. defense industry facilities, including office facilities, security facilities, and the acquisition of land for clear zones or to implement noise abatement zoning,

f. redevelopment programs, including the acquisition of real property in a designated blighted area and the rehabilitation of such property, the clearing and preparation of land for redevelopment, the transfer of interests in the property to nongovernmental persons for fair market value, and the relocation of occupants of the real property acquired,

g. governmental facilities, including city halls, courthouses, administration buildings, and police and fire stations,

h. community facilities, including parks, senior citizens centers, shelters for homeless or abused persons, and juvenile centers, and

i. public infrastructure facilities, including highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, wastewater and water distribution and supply systems, curbing, sidewalks and any similar public improvements, gas and electric production, distribution and transmission facilities, common utility or service facilities, landscaping, parking, and water detention/retention systems;

6. "Short periods" means the period of time preceding the beginning of full amortization of principal and interest due on bonds;

~~6.~~ 7. "True interest cost" means the rate used to discount the amounts payable on the respective principal and interest maturity dates which yields a result equal to the purchase price received for bonds; and

~~7.~~ 8. "Ultimate user" means the industry on whose behalf bonds are issued.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 803, is amended to read as follows:

Section 803. Whenever any municipality or county of this state votes any bonds or refunding bonds pursuant to Section 35 of Article X of the Oklahoma Constitution, such bonds shall be subject to the following requirements:

1. At least ninety percent (90%) of the proceeds from the bonds must be used for a qualified economic development or community development purpose, or to refund bonds issued for a purpose, which, on the date originally issued, was a qualified economic development or community development purpose; provided, however, that for purposes of determining such use, proceeds used to fund a debt service reserve shall be considered to be for a qualifying economic development or community development purpose;

2. The bonds must be issued in denominations of One Hundred Dollars ($100.00) or multiples thereof, except that the first numbered bond may be for such odd amount as will complete the full issue of the bonds;

~~2.~~ 3. The average coupon rate of the bonds shall not exceed fourteen percent (14%) per annum;

~~3.~~ 4. The principal shall begin to mature not less than ~~two (2) years~~ one (1) year or more than five (5) years after the dated date of the issue;

~~4.~~ 5. The bonds must have a final maturity no later than thirty (30) years after their date of issuance; and

~~5.~~ 6. A verification from the Administrator of the Oklahoma Department of Securities that all persons receiving compensation, directly or indirectly, for providing advice to a municipality or county with regard to the Municipal and County ~~Industrial~~ Economic and Community Development Bonds Act are appropriately registered with the Oklahoma Department of Securities as investment advisers or investment adviser representatives, as applicable, and that all persons receiving compensation, directly or indirectly, for the placement of the bonds are registered as broker-dealers or agents, as applicable.

SECTION 5. AMENDATORY 62 O.S. 2001, Section 804, is amended to read as follows:

Section 804. Except as otherwise provided in the Municipal and County ~~Industrial~~ Economic and Community Development Bonds Act, bonds sold pursuant to Section 35 of Article X of the Oklahoma Constitution shall be issued pursuant to the following terms:

1. Bonds may be sold for not less than ninety-eight percent (98%) of par with accrued interest added. All commissions allowed any firms, persons, or corporations for the sale of the bonds, after deducting from the sum total for which the bonds are sold, must leave in the treasury a sum equal to ninety-eight percent (98%) of the par value and accrued interest thereof;

2. The bonds must be made to mature in installments so that the annual maturing principal plus interest is as nearly equal as practicable throughout the term of the issue, or provide for level principal debt service payments, which provide for principal on the bonds to mature in equal annual installments, except that the first maturing installment may be for such sum, not more than one installment and the last maturing installment may be for such sum not more than two installments, as will complete the full issue of the bonds notwithstanding the necessity of varying the amount thereof to complete the same;

3. Whenever bonds shall be made or ordered by any municipality or county, the proper officers, before selling the bonds, shall cause at least ten (10) days' notice to be given of the time and place when and where bids therefor will be received. The notice shall be signed by the county clerk if issued by a county, and by the clerk of the municipality if issued by a municipality, and shall be published once a week for two (2) consecutive weeks in a legally qualified newspaper published in such political subdivision. The date mentioned in the notice for the sale of the bonds shall not be less than ten (10) days after the first publication thereof; and

4. The bonds must be awarded to the lowest true interest cost bidder who will pay therefor at least ninety-eight percent (98%) of par plus accrued interest. Bidders shall indicate the true interest cost of their bid. Upon the acceptance of a bid, the bonds shall be issued in accordance therewith and shall be delivered to the purchaser upon payment of the purchase price of the bonds. Each bidder shall submit with the bid a sum in cash or its equivalent, equal to two percent (2%) of the bid, and upon the acceptance of any bid, the deposit becomes the property of the county or municipality selling the bonds, and shall be credited on the purchase price of the bonds or returned upon payment in full of the purchase price, upon the understanding that if the purchaser fails for five (5) days after tender of the bonds to pay the balance of the purchase price, the sale is annulled and the deposit is retained by the governing body of the county or municipality and credited to the account for which the bonds are being issued and shall be used accordingly. No tender of the bonds to the purchaser is valid until after the expiration of the period of contestability, as now provided by law. All other deposits shall be returned. The governing body selling the bonds shall have the right to reject all bids and readvertise the bonds for sale.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 853, is amended to read as follows:

Section 853. As used in Section 850 et seq. of this title:

1. "Apportionment" means the direction by a governing body, authorized by the Legislature pursuant to Section 6C of Article X of the Oklahoma Constitution, to apply all or any portion of an increment of ad valorem taxes and all or any portion of sales taxes, other local taxes or local fees, or any combination thereof, to financing a plan and project in accordance with this act;

2. "Apportionment area" means the same as an increment district as defined under this act;

3. "Bonds" means evidences of indebtedness, tax apportionment bonds or other obligations issued by a public entity pursuant to the provisions of Section 863 of this title to finance project costs, pursuant to a project plan, which are to be repaid in whole or part with apportioned increments;

4. "District" means either an incentive district as authorized by Section 860 of this title or an increment district as authorized by Section 861 of this title. A district may consist of all or a portion of a project area;

5. "Enterprise area" means any area within a designated state or federal enterprise zone;

6. "Enterprise zone" means an enterprise zone as designated by the Department of Commerce pursuant to the provisions of Section 690.3 of this title or as designated by the federal government;

7. "Governing body" means the city council of a city, the board of trustees of a town or the board of county commissioners;

8. "Historic preservation area" means a district listed in or nominated by the State Historic Preservation Officer to the National Register of Historic Places, an historic structure or structures listed individually in or nominated by the State Historic Preservation Officer to the National Register of Historic Places,

with such district or structure being subject to historic preservation zoning, or for purposes of ad valorem tax exemptions provided for in subsection D of Section 860 of this title, a structure subject to historic preservation zoning. Rehabilitation undertaken in an historic preservation area shall meet the Secretary of the Interior's Standards for Rehabilitation, latest revision, in order to be eligible for the incentives or exemptions granted pursuant to Section 860 of this title;

9. "Increment" means that portion of ad valorem taxes in excess of the amount of that portion of the taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the district or as to an area later added to the district, the effective date of the modification of the plan, or that portion of sales taxes, other local taxes or local fees collected each year reasonably determined by a formula approved by the governing body to be generated by the project, which may be apportioned for specific project costs or as a specific revenue source for other public entities in the area in which the project costs take place;

10. "Local taxes" means ad valorem taxes, sales taxes and other local taxes which are levied by or on the behalf of a taxing entity;

11. "Planning commission" means an organization established for local planning by local government or governments in accordance with the laws of this state;

12. "Project" means any public project in furtherance of the objectives of the project plan;

13. "Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred which are listed in the project plan as costs of and incidental to public works or improvements and public buildings, including public school buildings, within a designated district. Any income, special assessments, or other revenues received, or

reasonably expected to be received, by the city, town or county in connection with the implementation of the project plan shall be used to pay project costs. Project costs include, but are not limited to:

a. capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new public or private buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing public or private buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment for public works, public improvements and public buildings and the clearing and grading of such land and environmental remediation related thereto,

b. financing costs, including interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity,

c. real property assembly costs, including clearance and preparation costs,

d. professional service costs, including those incurred for architectural, planning, engineering, legal and financial advice and services,

e. direct administrative costs, including reasonable charges for the time spent by employees of the city, town or county in connection with the implementation of a project plan or employees of private entities under contract with a public entity for project planning or implementation,

f. organizational costs, including the costs of conducting environmental impact studies or other impact studies, the cost of publicizing the consideration of the project plan, costs incidental to creation of the district, and the cost of implementing the project plan for the district,

g. interest, before and during construction and for two (2) years after completion of construction, whether or not capitalized,

h. fees for bond guarantees, letters of credit and bond insurance,

i. the amount of any contributions offset made in connection with the implementation of the plan,

j. the costs for determining or redetermining the base assessed value of a district,

k. costs of construction of public works or improvements, including but not limited to highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, parks, water distribution and supply systems, curbing, sidewalks and any similar public improvements, common utility or service facilities, landscaping, parking, and water detention/retention systems,

l. all or a portion of another taxing jurisdiction's capital costs resulting from the development or redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the plan and project, to the extent the governing body by written agreement accepts and approves such costs,

m. relocation costs to the extent that a governing body determines that relocation costs shall be paid or are required to be paid by federal or state law, and

n. all costs incurred in the maintenance, management, marketing and other services provided through an active Main Street Program recognized as such by the Oklahoma Department of Commerce;

14. "Project plan" means the approved plans of a city, town or county which may include a designated district or districts under this act in conformance with its comprehensive plan, which is intended by the payment of costs through apportionment of the increment or by the granting of incentives or exemptions to reduce or eliminate those conditions, the existence of which qualified the district, and to thereby enhance private investment of the tax bases of the taxing entities which extend into the district. Project plans may be a part of and incorporate existing neighborhood, renewal, economic development, public school and other such plans. Each project plan shall conform to the requirements specified by this act;

15. "Public entity" means any city, town, county, board, commission, authority, district, urban renewal authority or public trust;

16. "Reinvestment area" means any area located within the limits of a city, town or county requiring public improvements, including but not limited to transportation-related projects identified by any transportation authority pursuant to Section 1370.7 of Title 68 of the Oklahoma Statutes, to reverse economic stagnation or decline, to serve as a catalyst for retaining or expanding employment, to attract major investment in the area or to preserve or enhance the tax base or in which fifty percent (50%) or more of the structures in the area have an age of thirty-five (35) years or more. Such an area is detrimental to the public health, safety, morals or welfare. Such an area may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures;

presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. Such an area includes a blighted area as defined in Section 38-101 of Title 11 of the Oklahoma Statutes at the time of approval of the project plan; and

17. "Taxing entity" means a city, town, county, school district, political subdivision or other local entity in which local taxes or fees are levied by or on its behalf.

SECTION 7. AMENDATORY 62 O.S. 2001, Section 856, is amended to read as follows:

Section 856. A. The governing body shall designate and adopt the proposed boundaries of any district and the proposed boundaries of any project. Except as otherwise provided in this subsection, any districts created by a city or town shall be confined to that territory within the corporate limits of such city or town and any districts created by a county shall be confined to that territory within the unincorporated areas of the county. Any city, town or county may by agreement jointly create a contiguous district with another entity.

B. Upon the adoption and approval of the project plan, the governing body shall adopt an ordinance or resolution, whichever is applicable, which:

1. Describes the boundaries of districts and projects sufficiently definite to identify with ordinary and reasonable certainty the territory included in it;

2. Creates the district as of a date provided in it;

3. Assigns a name to the district for identification purposes. The first district created shall be known as either an Incentive District or Increment District Number One, City, Town or County of

_____, whichever is applicable. Each subsequently created district shall be appropriately named and shall be assigned the next consecutive number; and

4. Contains findings that:

a. the project area or district meets at least one of the following criteria:

(1) is a reinvestment area,

(2) is a historic preservation area,

(3) is an enterprise area, or

(4) is a combination of the areas specified in divisions (1), (2) and (3) of this ~~paragraph~~ subparagraph,

b. the improvement of the area is likely to enhance the value of other real property in the area and to promote the general public interest. It shall not be necessary to identify the specific parcels meeting the criteria,

c. the guidelines specified in paragraphs 1 and 2 of Section 852 of this title shall be followed,

d. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section 862 of this title within the city or town shall not exceed twenty-five percent (25%) of the total net assessed value of taxable property within the city or town for cities or towns having a population of fifty thousand (50,000) or more or shall not exceed thirty-five percent (35%) of the total net assessed value of taxable property within the city or town for cities or towns having a population of less than fifty thousand (50,000),

e. for projects approved by a county, the aggregate net assessed value of the taxable property in all

districts as determined pursuant to Section 862 of this title within the county shall not exceed fifteen percent (15%) of the total net assessed value of the taxable property within the county,

f. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section 862 of this title within the city, the town or the county shall not exceed twenty-five percent (25%) of the total net assessed value of any school district located within the city, town or county, and

g. the land area of this district and all other districts within the city, the town or the county shall not exceed twenty-five percent (25%) of the total land area of the city, the town or the county.

C. It is the intention of the Legislature in adopting the Local Development Act that no long-term contractual obligation be created by the mere adoption of an ordinance or resolution establishing an increment district. Notwithstanding any provision contained in an ordinance, resolution or project plan, an ordinance or resolution establishing an increment district shall constitute a legislative act and may be repealed, modified or amended at any time during the term of the increment district, by subsequent action of the governing body; provided, however, that no such ordinance shall be repealed, modified or amended during the time that any bonds payable from incremental revenues are outstanding without the consent of the bondholders, if such bonds are issued pursuant to the provisions of Article X, Section 35 of the Oklahoma Constitution following its amendment by State Question No. 693.

D. However, nothing in the Local Development Act shall restrict the ability of:

1. Any city, town or county to:

a. issue debt in accordance with the applicable provisions of Article X of the Oklahoma Constitution, and any statutes enacted in connection therewith, and

b. use incremental revenues derived from an increment district to pay principal, interest or premium associated with such indebtedness; or

2. Any public entity, other than a city, town or county, to:

a. issue tax apportionment bonds or notes in accordance with Section 863 of this title or to issue other types of revenue bonds or notes in accordance with other applicable provisions of Oklahoma law, and

b. use incremental revenues derived from an increment district to pay principal, interest or premium associated with such indebtedness.

SECTION 8. This act shall become effective July 1, 2003.

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.

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