

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1724

By: Braddock

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 2001, Sections 800, 801, 802, 803 and 804, which relate to the Municipal and County Industrial Development Bonds Act; modifying short title; modifying legislative findings; modifying definitions; modifying requirements applicable to bonds; modifying reference; amending 68 O.S. 2001, Section 2357.73, which relates to certain tax credits; restricting use of tax credit by certain transferees; authorizing transferability; imposing restriction; providing for nature of rights exercisable; imposing procedural requirements with respect to transferors and transferees; 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. 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 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, 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, police and fire stations, and school buildings,
- 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, water distribution and supply systems, curbing, sidewalks and any similar public improvements, 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 68 O.S. 2001, Section 2357.73, is amended to read as follows:

Section 2357.73 A. For taxable years beginning after December 31, 2000, and before January 1, 2008, there shall be allowed a

credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes for qualified investment in qualified rural small business capital companies.

B. The credit provided for in subsection A of this section shall be thirty percent (30%) of the cash amount invested in qualified rural small business capital companies and may only be claimed for a taxable year during which the qualified rural small business capital company invests funds in an Oklahoma rural small business venture and the credit shall be allowed for the amount of funds invested in an Oklahoma rural small business venture. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ten (10) taxable years.

C. No taxpayer may claim the credit provided for in this section for investments in qualified rural small business capital companies made prior to January 1, 2001.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified rural small business capital company is used by an Oklahoma rural small business venture for the acquisition of any other legal entity.

E. No financial lending institution shall be eligible to claim the credit provided for in this section except with respect to amounts invested in a qualified rural small business capital company, or with respect to amounts claimed as a tax credit transferee pursuant to subsection G of this section.

F. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

G. The amount of the credit allowed but not used by governmental units and Oklahoma corporations not subject to those taxes described in subsection A of this section, shall be freely transferable to subsequent transferees at any time during the five (5) years following the year of qualification; provided, however, that such credits cannot be transferred for an amount that is less than ninety percent (90%) of the amount of such credit. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period, nor shall the tax credit transferee's rights to claim and use such credit be reduced or restricted solely because the tax credit transferor was, by law, not subject to liability for such taxes. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferor and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit.

SECTION 7. This act shall become effective July 1, 2003.

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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