

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

SENATE BILL 1339

By: Robinson

AS INTRODUCED

An Act relating to public finance; creating the Oklahoma Pension Obligation Financing Act; providing short title; expressing legislative intent; making legislative findings; defining terms; creating the Pension Obligation Bond Committee; providing for membership, purpose and authority; limiting liability of members; authorizing issuance of certain bonds; limiting dates of issuance; providing for source of payment of bonds; providing priority of payments to be made from General Revenue Fund; providing for terms and conditions of bonds; providing for powers and duties of Treasurer; providing for use of proceeds of bonds; requiring the Director of State Finance to transfer certain funds; providing for various types of security for bonds; providing for terms and conditions of trust agreements; providing for refunding of bonds; creating revolving fund; providing for corpus of fund; authorizing certain expenditures; providing for construction of act; providing for exception to the Oklahoma Central Purchasing Act; identifying bonds as legal investments for certain purposes; providing for validation proceeding; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Pension Obligation Financing Act". It is the intent of the Legislature, in enacting this act, to provide for an efficient, equitable and economical means of satisfying pension obligations of the state.

B. The Legislature hereby finds and declares that the state's obligations to make payments to public retirement systems are

obligations imposed by law not subject to Sections 23 or 25 of Article X of the Oklahoma Constitution and the bonds authorized to be issued under this act have the same character under the Constitution as the pension obligations funded or refunded.

SECTION 2.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Pension Obligation Financing Act:

1. "Ancillary obligation" means the obligation of the state under any credit enhancement or liquidity agreement, including any obligation;

- a. in the form of bond insurance, a letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement, or
- b. under any remarketing agreement, auction agent agreement, broker-dealer agreement, or other agreement relating to the marketing of the bonds, interest rate or other type of swap or hedging contract, or
- c. under any investment agreement, forward purchase agreement, or similar structured investment contract, entered into by the Committee in connection with any bonds issued under this act.

2. "Bonds" means any bonds, notes, bond anticipation notes, interim certificates, debentures, or other obligations or forms of indebtedness issued pursuant to this act;

3. "Committee" means the Pension Obligation Bond Committee created pursuant to Section 3 of this act;

4. "Pension obligations" means the obligations of the state or any state agency to the retirement systems imposed by the retirement laws in the amounts determined by the governing boards of the retirement systems;

5. "Program" means the program established by this act under which the Committee shall issue bonds for the purpose of funding or refunding pension obligations;

6. "Retirement laws" means Section 901 et seq. of Title 74 of the Oklahoma Statutes, Section 17-101 et seq. of Title 70 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, Section 1101 et seq. of Title 20 of the Oklahoma Statutes, Section 2-300 et seq. of Title 47 of the Oklahoma Statutes, and any other laws providing for payment to be made by the state or any state agency to any retirement system to provide retirement benefits to employees of the state or any other individuals for which the state has an obligation to pay all or a portion of the contributions to a retirement system to ensure the payment of retirement benefits to those individuals; and

7. "Retirement systems" means the Oklahoma Public Employees Retirement System established pursuant to Section 901 et seq. of Title 74 of the Oklahoma Statutes, the Teachers' Retirement System of Oklahoma established pursuant to Section 17-101 et seq. of Title 70 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges established pursuant to Section 1101 et seq. of Title 20 of the Oklahoma Statutes, and the Oklahoma Law Enforcement Retirement System established pursuant to Section 2-300 et seq. of Title 47 of the Oklahoma Statutes and any other retirement system that provides retirement benefits to employees of the state or any other individuals for which the state has an obligation to pay all or a portion of the contributions to the retirement system to ensure the payment of retirement benefits to those individuals.

SECTION 3.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.3 of Title 62, unless there is created a duplication in numbering, reads as follows:

  A. Solely for the purpose of the issuance and sale of the bonds and ancillary obligations authorized by this chapter, the Pension

Obligation Bond Committee is hereby created. The Committee consists of the Governor or his or her designee, the Director of Finance, the State Auditor and Inspector, the Treasurer, and the Attorney General. Any member may designate a deputy to act as the member in his or her place and stead for all purposes, as though the member were personally present.

B. A majority of the Committee shall constitute a quorum of the Committee and may act for the Committee. The Director of State Finance shall serve as chair of the Committee.

C. No member, officer, or agent of the Committee is subject to personal liability on any bonds or ancillary obligations or other obligations issued or entered into under this chapter or for any acts or omissions of members, officers, or agents in carrying out the powers and duties conferred by this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.4 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Pension Obligation Bond Committee is authorized and empowered, for and in the name and on behalf of the state, to do all of the following:

1. Issue taxable or tax-exempt bonds for the purpose of funding or refunding pension obligations, paying related costs and ancillary obligations, or refunding any bonds previously issued pursuant to this chapter;

2. Execute debentures or other instruments evidencing the pension obligations;

3. Enter into ancillary obligations and other contracts deemed necessary by the Committee in connection with any bonds issued under this act;

4. Establish the terms and conditions for the program undertaken pursuant to this act;

5. Employ or contract for legal, consulting, underwriting, or other services in connection with the program as may be necessary in the judgment of the Committee, as approved by the Treasurer, as agent for sale of the bonds, for the successful financing of the program and the issuance and sale of bonds; and

6. In addition to the powers specifically granted in this act, do all things necessary or convenient, including delegation of necessary duties to the Director of State Finance, as chair, and to the Treasurer, as agent for sale of the bonds, to carry out the purposes of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.5 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Committee, at any time or from time to time, upon the request of the Director of State Finance, may issue bonds, for and in the name and on behalf of the state, for the purpose of financing or refinancing the program as authorized by this act. Bonds for the purpose of financing the program as authorized by this chapter may not be issued after June 30, 2005. However, bonds issued pursuant to this section may be refunded whether the date of refunding occurs before, on, or after June 30, 2005. Every issue of bonds, and any ancillary obligation entered into with respect to those bonds, shall be a debt and liability of the state payable from the General Revenue Fund of the state or, in the case of bond anticipation notes, payable from the proceeds of bonds to be issued pursuant to this act, subject only to the prior application of moneys in the General Revenue Fund for:

1. Support of the public school system and public institutions of higher education;
2. Payment of debt service on state general obligation bonds and commercial paper notes;

3. Reimbursement of state special funds, to the extent required by law, for internal borrowings; and

4. Payment of debt service on state revenue anticipation notes or registered reimbursement warrants.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.6 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The resolution, certificate, or other instrument of the Committee authorizing the issuance of the bonds may provide, or the Committee may delegate to the Treasurer, as agent for sale of the bonds, responsibility to determine, any or all of the following for the bonds:

1. The form of the bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination of those;

2. The date to be borne by any bonds;

3. The time of maturity of any bonds, which maturities may be before or after the term of the related pension obligation to be funded or refunded, provided that the time of maturity of any bonds does not exceed five (5) years;

4. The interest, fixed or variable, to be borne by the bonds;

5. The time that the bonds shall be payable;

6. The denominations, form, and registration privileges of the bonds;

7. The manner of execution of the bonds;

8. The place the bonds are payable, which may include any paying agent within or outside of the state;

9. The terms of redemption of the bonds;

10. The establishment of funds and accounts to be held by a trustee to provide for payment or security for the bonds or ancillary obligations or related costs; and

11. Any other terms and conditions deemed necessary by the Committee.

B. The Treasurer shall serve as agent for the offer and sale of the bonds. The bonds may be sold at either a competitive or negotiated sale, at times and at prices, for consideration, and with all other terms and conditions as the Treasurer, in his or her capacity as agent for sale of the bonds, shall determine.

C. The Treasurer is authorized to invest or direct the investment of any amounts held in trust for payment of the bonds in any securities or obligations authorized pursuant to Section 89.2 of Title 62 of the Oklahoma Statutes for the investment of other state funds.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.7 of Title 62, unless there is created a duplication in numbering, reads as follows:

The proceeds of the bonds shall be applied to the funding or refunding of pension obligations, or refunding of bonds previously issued under this act, together with all costs of issuing the bonds and refunding pension obligations or prior bonds and the costs of any ancillary obligation. The proceeds of the bonds may also be applied to the prepayment of pension obligations.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.8 of Title 62, unless there is created a duplication in numbering, reads as follows:

If proceeds of bonds issued pursuant to this act are used to pay the state's pension obligations to a retirement system for members whose compensation is paid from a fund other than the General Revenue Fund and notwithstanding any other provision of law, the Director of State Finance shall transfer quarterly from the special fund to the General Revenue Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of State Finance and authorized in any appropriation item or in any category thereof.

SECTION 9.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.9 of Title 62, unless there is created a duplication in numbering, reads as follows:

If proceeds of bonds issued pursuant to this act are used to pay the state's pension obligations to a retirement system for members whose compensation is paid from the General Revenue Fund and notwithstanding any other provision of law, the Director of State Finance shall abate quarterly to the General Revenue Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of State Finance and authorized in any General Revenue Fund appropriation item or in any category thereof.

SECTION 10.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.10 of Title 62, unless there is created a duplication in numbering, reads as follows:

In the discretion of the Committee, any bonds issued pursuant to this act may be secured by a trust agreement, indenture, or resolution between the state and any trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company chartered under the laws of any state or the United States and designated by the Treasurer. The trust agreement, indenture, or resolution may contain provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and not in violation of law. Any trust agreement, indenture, or resolution may set forth the rights and remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners. In addition to the foregoing, any trust agreement, indenture, or resolution may contain other provisions as the Committee may deem reasonable for the security of the bond owners, including, but not limited to, provisions specifying the date or dates on which debt service payments on the bonds shall be transferred to the trustee. Any trust accounts created by the trust

agreement, indenture, or resolution may be held outside the State Treasury.

SECTION 11.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.11 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Committee may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds issued to fund or refund pension obligations, including the payment of the principal thereof and interest and redemption premiums, if any. The date of maturity of bonds issued to refund any outstanding bonds may not exceed the date of maturity of the outstanding bonds they refund. The proceeds of bonds issued to refund any outstanding bonds may be applied to the retirement of those outstanding bonds at maturity, or the redemption, on any redemption date, or purchase of those outstanding bonds prior to maturity, subject to the terms and conditions as the Committee deems advisable.

SECTION 12.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.12 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund to be designated the "Pension Obligation Bond Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of the net proceeds of bonds issued and sold pursuant to the Oklahoma Pension Obligation Financing Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended to satisfy pension obligations of the state and to implement the provisions of the Oklahoma Pension Obligation Financing 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 13.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.13 of Title 62, unless there is created a duplication in numbering, reads as follows:

    A. This act, being necessary for the health, welfare, and safety of the state and its residents, shall be liberally construed to effect its purposes.

    B. This act shall be deemed to provide a complete and alternative authorization to take the actions necessary to implement this act, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of the bonds and their terms, the application of proceeds to the funding or refunding of pension obligations or prior bonds, and the entering into of any ancillary obligation under this act need not comply with the requirements of any other law applicable to the issuance of bonds or ancillary obligations. The purposes authorized by this act may be effectuated and bonds are authorized to be issued for any purposes under this act notwithstanding that any other law may provide for those purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

SECTION 14.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.14 of Title 62, unless there is created a duplication in numbering, reads as follows:

    The Oklahoma Central Purchasing Act shall not apply to agreements entered into by the Committee, or any individual to whom the Committee delegates contracting authority, in connection with the sale of bonds or other matters authorized under this act.

SECTION 15.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.15 of Title 62, unless there is created a duplication in numbering, reads as follows:

    Bonds issued pursuant to this act are a legal investment for any state special fund or trust fund, notwithstanding any provision of

law limiting the investments that may be made by the fund. The bonds shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies, and other persons carrying on banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used by any private financial institution, person, or association as security for public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law, including deposits to secure public funds.

SECTION 16.        NEW LAW        A new section of law to be codified in the Oklahoma Statutes as Section 696.16 of Title 62, unless there is created a duplication in numbering, reads as follows:

    The Pension Obligation Bond Committee may file an application with the Supreme Court of Oklahoma for the approval of bonds issued hereunder, and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each application. The court shall give the applications precedence over the other business of the court and consider and pass upon the applications and any protests which may be filed thereto as speedily as possible. Notice of the hearing on each application shall be given by notice published in a newspaper of general circulation in the state that on a day named the Committee will ask the court to hear its application

and approve the bonds. The notice shall inform all persons interested that they may file protests against the issuance of the bonds and be present at the hearing and contest the legality thereof. The notice shall be published one time not less than ten (10) days prior to the date named for the hearing and the hearing may be adjourned from time to time in the discretion of the court. If the court shall be satisfied that the bonds or any portions thereof have been properly authorized in accordance with this act and the Constitution of Oklahoma, and that when issued they will constitute valid obligations in accordance with their terms, the court shall render its written opinion approving the bonds and shall fix the time within which a petition for rehearing may be filed. The decision of the court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the Committee, the State of Oklahoma, its officers, agents and instrumentalities, and all other persons, and thereafter the bonds so approved and the rents and revenues pledged to their payment shall be incontestable in any court in the State of Oklahoma.

SECTION 17. This act shall become effective November 1, 2004.

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