

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE BILL 720

By: Fisher

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 2001, Sections 695.1, 695.3, 695.6, 695.7, 695.8, 695.8a, 695.9 and 695.11A, which relate to bond oversight; amending 74 O.S. 2001, Sections 5062.6a, 5063.4 and 5063.11, which relate to issuance of bonds; updating and conforming language; adding and deleting definitions; deleting obsolete language; modifying authority and process for appointing and removing Oklahoma State Bond Advisor; deleting obsolete language; repealing 62 O.S. 2001, Sections 695.4 and 695.5, which relate to Legislative and Executive Bond Oversight Commissions; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2001, Section 695.1, is amended to read as follows:

Section 695.1 Sections ~~92~~ 695.1 through ~~101~~ 695.11A of this ~~act~~ title shall be known and may be cited as the "Oklahoma Bond Oversight and Reform Act".

SECTION 2. AMENDATORY 62 O.S. 2001, Section 695.3, is amended to read as follows:

Section 695.3 As used in the Oklahoma Bond Oversight and Reform Act:

1. ~~"Executive Commission" means the Executive Bond Oversight Commission;~~

2. ~~"Legislative Commission" means the Legislative Bond Oversight Commission;~~

3. ~~"Commissions" means the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission~~ "Council" means the

Council of Bond Oversight, created pursuant to Section 695.11A of this title;

4. 2. "State Governmental Entity" means the State of Oklahoma or any agency, board, commission, authority, department, public trust of which the state is the beneficiary or other instrumentality of state government, other than a public trust with the state as beneficiary whose jurisdiction is limited to one county, including, but not limited to, the following:

- a. Oklahoma Municipal Power Authority,
- b. Oklahoma Development Authority,
- c. Oklahoma Industrial Finance Authority,
- d. Grand River Dam Authority,
- e. Oklahoma Water Resources Board,
- f. Northeast Oklahoma Public Facilities Authority,
- g. Oklahoma ~~Turnpike~~ Transportation Authority,
- h. Oklahoma Housing Finance Authority, and
- i. Oklahoma Public, Industrial and Cultural Facilities Authority;

~~5.~~ 3. "Local Governmental Entity" means counties, cities and towns, school districts, public trusts of which a county, city or town or school district is the beneficiary or other political subdivision of the state; and

~~6.~~ 4. "Purpose" means the issuer's principal intended use of the funds derived from the issuance of bonds or other obligations.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 695.6, is amended to read as follows:

Section 695.6 A. ~~The Executive Commission and Legislative Commission shall meet jointly at least once each month on the last Thursday of each month or on such other day as agreed upon by the chairmen of the Commissions. The Commissions may meet, jointly or separately, at such other times at the call of the respective chairmen of the Commissions. Any official action of the Executive~~

~~Commission or the Legislative Commission on any subject requiring action by both Commissions shall be taken in a joint meeting of the Commissions. The lack of a quorum or lack of action of one of the Commissions at a joint meeting shall not prohibit or invalidate any official action taken by the other Commission at the meeting.~~

B. The Oklahoma State Bond Advisor, as provided in Section 695.7 of ~~Title 62 of the Oklahoma Statutes~~ this title, shall provide support staff necessary to implement the purposes and functions of the ~~Commissions~~ Council of Bond Oversight.

B. The Attorney General shall provide legal counsel to the ~~Commissions~~ Council.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 695.7, is amended to read as follows:

Section 695.7 A. 1. The ~~Executive and Legislative Bond Oversight Commissions jointly~~ Council of Bond Oversight 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, who shall have the title "Oklahoma State Bond Advisor".

~~The Commissions~~ 2. When appointing a person to the position of Oklahoma State Bond Advisor, the Council 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 three of the members of the ~~Executive Commission and the Legislative Commission at a joint meeting of the Commissions~~ Council and

appointed to the position, subject to the advice and consent of the Senate.

3. 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~~ for cause by an affirmative vote of three of the members of the Council, after a public hearing.

B. The Oklahoma State Bond Advisor shall be an independent position within the 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 Council~~, with approval of the ~~Commissions~~ Council.

C. 1. Except as provided in Section 695.8 of this title, 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~~ Council 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 5. AMENDATORY 62 O.S. 2001, Section 695.8, is amended to read as follows:

Section 695.8 A. The ~~Executive Bond Oversight Commission and the Legislative Bond Oversight Commission~~ Council of Bond Oversight 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 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~~ Council of Bond Oversight 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~~ Council 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~~ Council 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~~ Council 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.

- c. The ~~Executive and Legislative Bond Oversight Commissions~~ Council may establish maximum compensation levels to be paid to individuals and firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program financings. The ~~Executive and Legislative Bond Oversight Commissions~~ Council may set such compensation levels for a one-year period and such compensation will be applicable to all individuals and firms participating in the program for that period. Providers of such services selected prior to making application may be employed subject to the established maximum compensation levels. Prior to December 31 of each year, the ~~Executive and Legislative Bond Oversight Commissions~~ Council shall review market conditions and set new compensation levels for the program. Provided, such compensation levels may not exceed the compensation levels obtained by the Oklahoma Development Finance Authority through its most recent invitation to bid for the services of individuals and firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program financing; and

5. Adopt, amend and repeal rules to regulate affairs of the ~~Commissions~~ Council and to implement the powers and purposes of the ~~Commissions~~ Council.

B. The ~~Commissions~~ Council may establish budgets in order to fulfill ~~their~~ its 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 of the ~~Commissions~~ Council, derived from proceeds of bond issues approved by the ~~Commissions~~ Council.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 695.8a, is amended to read as follows:

Section 695.8a There is hereby re-created in the State Treasury a revolving fund for the Department of Central Services, to be designated the "Bond Oversight Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees collected by the ~~Executive Bond Oversight Commission~~ and the ~~Legislative Bond Oversight Commission~~ Council of Bond Oversight as authorized by Section 695.8 of ~~Title 62 of the Oklahoma Statutes~~ this title and any other monies provided for by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Central Services for expenses related to the Oklahoma Bond Oversight and Reform 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 7. AMENDATORY 62 O.S. 2001, 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~~ Council of Bond Oversight as provided for in Section 695.8 of this title; provided, however, that in no event shall the ~~Commissions'~~ Council's 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~~ Council a written description of the nature, need and purpose of such proposed financing. The ~~Commissions~~ Council 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~~ Council 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~~ Council shall be based on a written report prepared for and provided to the ~~Commissions~~ Council by the Program Development and Credit Review Committee as provided in Section 5062.6a of Title 74 of the Oklahoma Statutes, provided the ~~Commissions~~ Council 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~~ Council 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. 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 refiling with the ~~Commissions~~ Council 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~~ Council.

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-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~~ Council 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~~ Council, the prior approval shall be void and the State Governmental Entity shall be required to seek approval from the ~~Commissions~~ Council 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~~ Council a copy of the official statement or notice of sale and any other information concerning the proposed financing required by ~~either of the Commissions~~ Council.

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 8. AMENDATORY 62 O.S. 2001, Section 695.11A, is amended to read as follows:

Section 695.11A A. In the event either the Executive or Legislative Bond Oversight Commission is found unconstitutional by a final, unappealed order of a court of competent jurisdiction, all of the powers, duties and responsibilities of the Commissions shall devolve upon the Council of Bond Oversight, and previous joint or individual actions, approvals and disapprovals of the Executive and Legislative Bond Oversight Commissions are hereby confirmed, ratified, validated and deemed incontestable. In the event the Executive or the Legislative Bond Oversight Commission or the Council of Bond Oversight is found unconstitutional by a final, unappealed order of a court of competent jurisdiction, such determination shall not nullify joint or individual actions,

approvals and disapprovals of the Executive and Legislative Bond Oversight Commissions or the Council of Bond Oversight and any obligations entered into by the Oklahoma Development Finance Authority pursuant to provisions of the Oklahoma Development Finance Authority Act and the Credit Enhancement Reserve Fund Act with approval by the Bond Oversight Commissions or the Council of Bond Oversight and such obligations are hereby confirmed, ratified, validated and deemed incontestable.

B. The Council shall consist of five (5) nonlegislative members. One member shall be appointed by the Speaker of the House of Representatives, one member shall be appointed by the President Pro Tempore of the Senate, two members shall be appointed by the Governor with the advice and consent of the Senate and one member shall be the Director of State Finance. Three members of the Council shall constitute a quorum. The affirmative vote of three members present and voting shall be necessary for any action taken by the Council. Appointed members shall serve a term of two (2) years and may be removed for cause by the appointing authority. Members may be appointed for additional terms.

C. A vacancy on the Council shall be filled in a like manner as the original appointment, but only for the remainder of the term. The Council shall elect one of its members ~~chairman~~ as chair and may elect such other officers as it deems necessary. No vacancy in the membership of the Council shall impair the right of the Council to exercise all rights and duties of the Council.

D. If the powers, duties and responsibilities of the Commissions devolve upon the Council pursuant to this section, the person serving as the Oklahoma State Bond Advisor on the date of such devolution shall continue to serve in that position ~~until the Governor appoints a new Oklahoma State Bond Advisor from a list of candidates provided by the Council and said appointee has been confirmed by the Senate. Thereafter, and in the case of a vacancy,~~

~~the Oklahoma State Bond Advisor shall be appointed, subject to the advice and consent of the Senate, by the Governor from a list of candidates provided by the Council and shall serve a term of office coterminous with that of the appointing Governor. The Oklahoma State Bond Advisor may be unless removed by the Council for cause, after a public hearing pursuant to the provisions of Section 695.7 of this title and until the new person appointed to the position, pursuant to the provisions of Section 695.7 of this title, has been confirmed by the Senate.~~

SECTION 9. AMENDATORY 74 O.S. 2001, Section 5062.6a, is amended to read as follows:

Section 5062.6a A. There is hereby created the Program Development and Credit Review Committee within the Oklahoma Development Finance Authority. The committee shall be composed of three (3) members as follows:

1. One member who is designated by the board of directors of the Oklahoma Development Finance Authority;
2. One member who is the Oklahoma State Bond Advisor; and
3. One member who is jointly selected by the Oklahoma State Bond Advisor and by the designee of the Oklahoma Development Finance Authority; provided, the Oklahoma Development Finance Authority shall contract for the services of said member.

B. The Oklahoma Development Finance Authority shall provide all staff support required by the committee.

C. The meetings of the committee shall be subject to the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes~~, and the Oklahoma Open Records Act, ~~Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes~~. Any information submitted to or compiled by the committee with respect to the marketing plans, financial statements, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be

confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the members of the committee.

D. If a member of the committee has any direct or any indirect interest in any approval, contract or agreement upon which the member may be called upon to act or vote, the member shall disclose the same to the committee prior to the taking of final action by the committee concerning such contract or agreement and shall so disclose the nature and extent of such interest and the member's acquisition thereof, which disclosure shall be publicly acknowledged by the committee and entered upon the minutes of the committee. If a member holds such an interest, the member shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office, or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the committee. Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the committee.

E. No member of the committee may be subject to any personal liability or accountability for having acted within the course and scope of the person's membership on the committee. The committee

shall indemnify any member of the committee against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of past or present association with the committee and the subject of which was within the course and scope of the person's membership on the committee.

F. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to ~~Section 5 of this act~~ Sections 5062.8a and Section 5063.4i of this title, shall:

1. Prior to any action by the Oklahoma Development Finance Authority, review and approve all program development uses of the Credit Enhancement Reserve Fund;

2. Prior to any action by the Oklahoma Development Finance Authority, review and approve all commitments of the Credit Enhancement Reserve Fund;

3. Facilitate implementation of subsection H of Section 5062.6 of this title; and

4. Review the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority to determine the adequacy and sufficiency of such rules, regulations and policies for fulfilling the intents and purposes of the Credit Enhancement Reserve Fund Act, ~~Section 5063.1 et seq. of this title.~~ The committee shall prepare and provide to the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight and the Oklahoma Development Finance Authority a written finding on such determination.

G. The Oklahoma Development Finance Authority may accept or reject approvals of the committee, but may not modify the approvals.

H. On any application for financing proposed to be supported pursuant to the Credit Enhancement Reserve Fund Act, except for the Quality Jobs Investment Program established by ~~Section 5 of this act~~

Sections 5062.8a and ~~Section~~ 5063.4i of this title, the application and any relevant materials considered by the Oklahoma Development Finance Authority when making a determination concerning the proposed financing shall be reviewed by the committee for the purpose of evaluating and assigning a credit rating based upon the risk of the venture and the ultimate risk of loss exposure to the Credit Enhancement Reserve Fund.

I. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to ~~Section 5 of this act~~ Sections 5062.8a and ~~Section~~ 5063.4i of this title, shall examine the credit analysis and due diligence on each such proposed financing and shall prepare and provide a written report to the ~~Commissions~~ Council and the Oklahoma Development Finance Authority concerning the credit rating and concerning sufficient compliance with the Rules Regarding the Administration of the Credit Enhancement Reserve Fund.

SECTION 10. AMENDATORY 74 O.S. 2001, Section 5063.4, is amended to read as follows:

Section 5063.4 A. The Fund shall be employed by the Oklahoma Development Finance Authority solely to secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, for the specific purpose of enhancing and supporting the credit of such revenue bonds and other financial obligations. Such other financial obligations may include guarantees, loans, letters of credit or other similar obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, and may include commitments by the Authority for the Fund to secure loans made by private financial institutions. Except for the financial obligation provided in ~~Section 5 of this act~~ Sections 5062.8a and ~~Section~~ 5063.4i of this title, each such other financial obligation must be secured by a

first lien security interest on real estate, equipment or inventory, and, except as provided in ~~Section 5 of this act~~ and Sections 5062.8a, 5063.4i and 5063.4b of this title, the amount of the commitment by the Fund shall not exceed twenty-five percent (25%) of the value of the collateral securing each such financial transaction. No portion of the monies or other assets deposited to the Fund shall be expended or otherwise used by the Authority in meeting its day-to-day operating expenses, in paying the cost of issuance of the Authority's revenue bonds or other financial obligations, or in supporting any other activity of the Authority not directly related to the Credit Enhancement Reserve Fund or to enhancing the credit of the Authority's revenue bonds and other financial obligations.

B. The Authority shall administer the Fund prudently and according to good insurance practice. Such administration will minimize the loss experience of the Fund, assure the future viability of the Fund, and assure the continuing availability of the proceeds of general obligation bonds issued pursuant to Section 5063.11 of this title as a credit enhancement vehicle for bond issues in this state on an ongoing basis. Accordingly, the granting of credit enhancement by the Fund shall be based on principles of insurability generally applied in the credit enhancement/insurance industry. The Authority is authorized and directed to adopt initial rules and regulations governing the credit enhancement activities and administration of the Fund, including rules and regulations dealing with the subjects of project feasibility, credit evaluation, collateral evaluation, reinsurance, maximum risk retention by the Fund, avoidance of adverse risk selection, and all other factors deemed relevant by the Authority to the decision whether the Fund should provide credit enhancement to a particular issue of debt, to what extent, on what terms, and for what premium rate.

C. The initial rules and regulations for administration of the Fund promulgated by the Authority pursuant to subsection B of this section shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

D. No general obligation bonds may be issued pursuant to Section 5063.11 of this title except upon the approval by a vote of the people of the State of Oklahoma authorizing the Oklahoma Development Finance Authority to issue general obligation bonds for the purposes set forth in this act and unless and until initial rules and regulations governing administration of the Fund have been adopted by the Authority. The Authority by resolution or other appropriate action of the Authority shall determine each issue of bonds or portions thereof with respect to which the benefits of the act shall inure.

E. The Authority is authorized to amend the initial rules and regulations governing administration of the Fund, either by addition of new rules and regulations, or a change or repeal of existing rules and regulations; provided, that such amendment, whether by addition, change or repeal, shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

F. Except as provided in subparagraph b of paragraph 4 of subsection A of Section 695.8 of Title 62 of the Oklahoma Statutes, credit enhancement by the Fund for any bonds or other financial obligations issued by the Authority pursuant to law shall also require approval of the ~~Executive Bond Oversight Commission and the Legislative Bond Oversight Commission~~ Council of Bond Oversight as provided by law.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 5063.11, is amended to read as follows:

Section 5063.11 A. The Oklahoma Development Finance Authority is hereby authorized to issue bonds of the State of Oklahoma, to be known as Credit Enhancement Reserve Fund General Obligation Bonds, in a total principal amount not to exceed One Hundred Million Dollars (\$100,000,000.00) for the sole purpose of generating monies to be deposited to the Fund.

B. The Oklahoma Development Finance Authority shall not issue Credit Enhancement Reserve Fund General Obligation Bonds unless and until the Authority has determined that there are insufficient monies in the Credit Enhancement Reserve Fund to cover imminent losses on revenue bonds or other obligations insured by the Fund. In such instances, the Authority shall, prior to the issuance of any State of Oklahoma Credit Enhancement Reserve Fund General Obligation Bonds, submit to the ~~Executive Bond Oversight Commission and Legislative Bond Oversight Commission~~ Council of Bond Oversight a written plan describing the need for the issuance of the bonds.

SECTION 12. REPEALER 62 O.S. 2001, Sections 695.4 and 695.5, are hereby repealed.

SECTION 13. 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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