

ENROLLED HOUSE
BILL NO. 2355

By: Cooksey of the House

and

Jolley and Hobson of the
Senate

An Act relating to the Oklahoma Municipal Power Authority; amending 11 O.S. 2001, Sections 24-107 and 24-108, which relate to the issuance of bonds by the Oklahoma Municipal Power Authority; modifying certain powers, rights and privileges of the Authority; requiring approval of certain actions; modifying the interest cost of the money received from the sale of certain bonds; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 24-107, is amended to read as follows:

Section 24-107. (a) The Authority shall have and is hereby authorized to exercise all powers, rights and privileges enumerated in this section. Such powers, rights and privileges shall be exercised by its Board of Directors unless otherwise specifically provided herein or by the bylaws of the Authority as in effect from time to time.

(b) The Authority may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate, individually or jointly with other persons, in one or more projects, proposed, existing or under construction, and may act as agent, or designate one or more persons, whether or not participating in a project, to act as its agent, in connection with the planning, financing, acquisition, construction, reconstruction, ownership, lease, operation, maintenance, repair, extension or improvement of the project.

(c) The Authority may investigate the desirability of and necessity for additional sources and supplies of electrical energy and fuel and other supplies of any kind for such purpose, and make studies, surveys and estimates as may be necessary to determine the feasibility and cost thereof.

(d) The Authority may cooperate with other persons in the development of sources and supplies of electrical energy and fuel and other supplies of any kind for such purposes, and give assistance with personnel and equipment in any project.

(e) The Authority may apply to any person for consents, authorizations or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.

(f) The Authority may perform any act authorized by this act through, or by means of, its officers, agents or employees or by contract with any person, including, without limitation, the employment of engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the Board of Directors, and fix and pay their compensation from funds available to the Authority therefor.

(g) The Authority may acquire, hold, use and dispose of income, revenues, funds and money.

(h) The Authority may, individually or jointly with other persons, acquire, own, hire, use, operate and dispose of personal property and any interest therein.

(i) The Authority may, individually or jointly with other persons, acquire, own, use, lease as lessor or lessee, operate and dispose of real property and interests in real property, including projects existing, proposed or under construction, and make improvements thereon.

(j) The Authority may grant the use by franchise, lease or otherwise and make charges for the use of any property or facility owned or controlled by it.

(k) The Authority may borrow money and issue negotiable bonds, secured or unsecured, in accordance with this act, and may enter into interest rate swaps and other derivative products, and other financial instruments intended to hedge interest rate risk or manage interest rate costs, including any option to enter into or terminate any of them, that the Authority deems to be necessary or desirable in connection with any bonds issued prior to, at the same time as, or after entering into such arrangement, and containing such terms and provisions, and may be with such parties, as determined by the Authority. Provided, any action taken by the Authority pursuant to this subsection must first be approved by the Office of the State Bond Advisor and the Council of Bond Oversight pursuant to the provisions of the Oklahoma Bond Oversight and Reform Act.

(l) The Authority may invest money of the Authority not required for immediate use, including proceeds from the sale of any bonds.

(m) The Authority may exercise the power of eminent domain in accordance with the provisions of Section ~~10~~ 24-110 of this title.

(n) The Authority may determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate or control.

(o) The Authority may contract with any person for the planning, development, construction, operation, sale or lease as lessor or lessee of any project or for any interest therein, on such

terms and for such period of time as its Board of Directors shall determine.

(p) The Authority may contract with any eligible public agency, any public trust, or any other person for the sale of power and energy, transmission services, power supply development services or other services within or without the State of Oklahoma on such terms and conditions as the Board of Directors shall approve. Any such contract may be for the sale of output and services of a particular project or may be for output and services generally without regard to a specific project and may be for the supply of a specific quantity of output or a percentage of the output of a specific project or other specific facility or may be based on the requirements of the purchaser or may be on such other terms and conditions as the Board of Directors deems appropriate.

(q) The Authority may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this act, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or storage of electric power and energy, and fuel and other supplies of any kind for any such purposes, within and without the State of Oklahoma, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, on such terms and for such period of time as the Board of Directors determines, and derivative or other instruments intended to hedge fuel cost risk associated with any projects or power purchases or supply arrangements of the Authority, or to hedge fixed or variable interest rate exposure associated with permitted investments, including any option to enter into or terminate any of them, that the Authority deems to be necessary or desirable, and containing such terms and provisions, and may be with such parties, as determined by the Authority.

(r) In any case in which the Authority participates in a project as a joint owner with one or more persons, the Authority may enter into an agreement or agreements with respect to such project with the other person or persons participating therein, and any such agreement may contain such terms, conditions and provisions consistent with the provisions of the act as the parties thereto shall deem to be in their best interest. Any such agreement may include, but need not be limited to, provisions defining what constitutes a default thereunder and providing for the rights and remedies of the parties thereto upon the occurrence of such a default deemed appropriate by the Board of Directors including, to the extent deemed appropriate, the acquisition by nondefaulting parties of all or any part of the defaulting party's interest; provisions setting forth such restraints on alienation of the interests of the parties in the project as the Board of Directors deems appropriate; provisions for the construction, operation and maintenance of such electric generation or transmission facility by any one or more of the parties to such agreement which party or parties shall be designated in or pursuant to such agreement as agent or parties thereto or by such other means as may be determined by the parties thereto; and provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project. In exercising its power to participate in a project as a joint owner

with one or more persons, the Authority may not loan its credit to any person which is a joint owner of such project; provided, however, the appropriate allocations of the costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project between the Authority and such persons shall not be a loan of credit by the Authority to such persons. In carrying out its functions and activities as such agent with respect to construction, operation and maintenance of a project, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the Authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to the person acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be made binding upon the Authority without further action or approval by the Authority.

(s) The Authority may procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable, or may self-insure against such losses.

(t) The Authority may contract for and accept any gifts, grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to the provisions of this act, with the terms and conditions thereof.

(u) The Authority may adopt a corporate seal and may sue or be sued.

(v) The Authority may exercise all other powers not inconsistent with the Constitution of the State of Oklahoma or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to effectuate its authorized purposes or to the exercise of any of the powers enumerated in this act.

(w) Notwithstanding any other provision herein seemingly to the contrary, the Authority may not sell output (i) at retail to the ultimate consumers thereof, (ii) to any municipality which does not qualify as an eligible public agency under the definition set forth in subsection (d) of Section 5-(d) 24-105 of this ~~act~~ title, or (iii) to any trust created and existing under the provisions of the Local Industrial Development Act, as provided by Sections 651 et seq. of Title 62 of the Oklahoma Statutes, or the Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, which does not qualify as a public trust under the definition set forth in subsection (g) of Section 5-(g) 24-105 of this ~~act~~ title.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 24-108, is amended to read as follows:

Section 24-108. A. Purposes. The Authority may issue bonds in such principal amounts as the Authority deems necessary to provide sufficient funds to perform any of its corporate purposes and powers including, without limitation, the acquisition, construction, or

termination of any project to be owned or leased, as lessor or lessee, by the Authority or the acquisition of any interest therein or any right to the products or services thereof, the funding or refunding of the principal of, redemption premium, if any, and interest on, any bonds issued by the Authority whether the bonds or interest to be funded or refunded have or have not become due, the payment of engineering, legal, and other expenses, together with interest subsequent to the estimated date of completion of the project for such period of time as the Board of Directors determines appropriate, the establishment or increase of reserves to secure or to pay the bonds or interest thereon, the providing of working capital, and the payment of, and the establishment or increase of reserves for, all other costs or expenses of the Authority incident to, and necessary or convenient to perform, its corporate purposes and powers.

B. Security for Bonds. Every issue of bonds of the Authority shall be payable out of the revenues or funds of the Authority, subject to any agreements with the holders of particular bonds pledging any particular revenues or funds. The Authority may issue such types of bonds as it may determine to be appropriate, including bonds as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest therein or a right to the products and services thereof, or from one or more revenue-producing contracts made by the Authority with any person, or its revenues generally. Any such bonds may be additionally secured by a pledge or assignment of any revenue-producing contracts made by the Authority with any person or of any grant, subsidy, or contribution from any person or a pledge of any income or revenues, funds, or monies of the Authority from any source.

C. Negotiability. All bonds of the Authority shall have all the qualities of negotiable instruments pursuant to the laws of this state.

D. Bond Provisions. Bonds of the Authority shall be authorized by a resolution adopted by a majority of the members of the Board of Directors then in office and may be issued pursuant to ~~said the~~ bond resolution or pursuant to a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates which may be fixed or may change at such time or times and in accordance with such formula or method of determination, ~~provided that the interest cost of the money received from the sale of the bonds computed to maturity in accordance with standard bond tables in general use by banks and insurance companies shall not exceed the prime rate of interest of the Oklahoma bank with which the Authority has its primary banking relationship as of the date of sale of the bonds, and provided further that in any event such interest cost shall not exceed the average annual rate of fourteen percent (14%).~~ Said The bonds shall also be in such form, either coupon or registered, carry such conversion, registration, and exchange privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or without this state, be subject to such terms of redemption with or without premium, and contain or be subject to such other terms as the bond resolution, trust indenture, or other security agreement may provide. ~~Said The~~ bonds shall not be restricted by the provisions of any other law limiting the amounts, maturities,

interest rates, or other terms of obligations of eligible public agencies or private persons. The bonds shall be sold, in such manner as the Board of Directors shall determine, at public or private sale. The Board of Directors may also authorize bonds to be issued and sold from time to time and may delegate to such officer or agent of the Authority as the Board of Directors selects the power to determine the time and manner of sale, public or private, the maturities and rate or rates of interest which may be fixed or may vary at such time or times and in accordance with a specified formula or method of determination, provided that the interest cost of the money received from the sale of the bonds computed to maturity in accordance with standard bond tables in general use by banks and insurance companies shall not exceed the maximum rate of interest provided for in this section. ~~Said~~ The bonds shall be subject to such other terms and conditions deemed appropriate by ~~said~~ the officer or agent; provided, however, that the amounts and maturities of, and the interest rate or rates not exceeding the maximum rate of interest provided for in this section on, ~~said~~ the bonds shall be within the limits prescribed by the Board of Directors in its resolution delegating to ~~said~~ the officer or agent the power to authorize the sale and issuance of ~~said~~ the bonds.

E. Execution of Bonds. Bonds of the Authority may be issued and delivered notwithstanding the fact that one or more of the officers executing them shall have ceased to hold office at the time the bonds are actually delivered.

F. Temporary Bonds. Pending preparation of definitive bonds, the Authority may issue temporary bonds which shall be exchanged for the definitive bonds.

G. Consents. Bonds of the Authority may be issued pursuant to the provisions of the Oklahoma Municipal Power Authority Act without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceeding, condition, or occurrence except as specifically required by the provisions of the Oklahoma Municipal Power Authority Act.

H. Official Statement, Prospectus or Offering Document; Filing. At least five (5) business days prior to the delivery of and payment for any bonds, there shall be filed with the Secretary of State a preliminary copy of the official statement, prospectus, or other offering document pertaining to the issuance. Prior to the expiration of fifteen (15) business days following ~~said~~ the bond delivery and payment, there shall be filed with the Secretary of State and the Oklahoma Securities Commission a copy, in final form, of ~~said~~ the official statement, prospectus, or other offering document. If no official statement, prospectus, or other offering document is used in connection with the sale of ~~said~~ the bonds, in lieu thereof there shall be filed a copy of the draft and final proceedings of the Authority authorizing the sale and issuance of the bonds.

I. Resolution Constitutes a Contract. The bond resolution, trust indenture, or other security agreement pursuant to which any bonds are issued shall constitute a contract with the holders of the bonds and may contain provisions including but not limited to:

1. The terms and provisions of the bonds;

2. The pledge and grant of a security interest in any personal property and in all or any part of the revenue from any project or any revenue-producing contract made by the Authority with any person to secure the payment of bonds, subject to any agreements with the holders of bonds which might then exist;

3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the Authority may have any rights or interest;

4. The rates or charges for electrical energy or other services rendered by the Authority, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue;

5. The creation of reserves or sinking funds and the regulation and disposition thereof;

6. The purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge or revenues to secure the payment of the bonds;

7. The limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

8. The rank or priority of any bonds with respect to any lien or security;

9. The creation of special funds or monies to be held in trust or otherwise for operational expenses, payment, or redemption of bonds, reserves, or other purposes, and the use and disposition of monies held in ~~said~~ the funds;

10. The procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or revised, the amount of bonds the holders of which must consent thereto, and the manner in which consent may be given;

11. The definition of the acts or omissions to act which shall constitute a default in the duties of the Authority to holders of its bonds, and the rights and remedies of the holders in the event of default, including, if the Authority so determines, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the bond resolution, trust indenture, or other security agreement;

12. Any additional agreements with or for the benefit of the holders of bonds or any covenants or restrictions necessary or desirable to safeguard the interest of the holders;

13. The custody of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

14. The vesting in a trustee or trustees, within or without this state, of such properties, rights, powers, and duties in trust as the Authority may determine, or the limiting or abrogating of the rights of the holders of any bonds to appoint a trustee, or the limiting of the rights, powers, and duties of ~~said~~ the trustee; or

15. The appointment of and the establishment of the duties and obligations of, any paying agent or other fiduciary within or without this state.

J. Any pledge of revenues, securities, contract rights, or other personal property made by the Authority pursuant to the provisions of the Oklahoma Municipal Power Authority Act shall be valid and binding from the date the pledge is made. The revenues, securities, contract rights, or other personal property so pledged and then held or thereafter received by the Authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the Authority without regard to whether ~~said~~ the parties have notice of the lien. The bond resolution, trust indenture, security agreement, or other instrument by which a pledge is created need not be filed or recorded in any manner.

K. Neither the officials, directors, members of the Authority, or any person executing bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. The Authority shall have power to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee, or agent of the Authority, in connection with any threatened, pending, or completed action, suit, or proceeding.

L. The Authority shall have power to purchase bonds out of any funds available therefor, and to hold, pledge, cancel, or retire the bonds and coupons prior to maturity, subject to and in accordance with any agreements with the holders.

M. The principal of, premium, if any, and interest upon any bonds issued by the Authority shall be payable solely from the revenues or funds pledged or available for their payment as authorized by the provisions of the Oklahoma Municipal Power Authority Act. Each bond shall contain a statement that it constitutes an obligation of the Authority, that the principal thereof, premium, if any, and interest thereon are payable solely from revenues or funds of the Authority and that neither the State of Oklahoma or any political subdivision thereof, or any eligible public agency or public trust which has contracted with the Authority, is obligated to pay the principal of, premium, if any, or interest on the bonds and that neither the faith and credit or the taxing power of the State of Oklahoma or any such political subdivision thereof or of any such eligible public agency or public trust is pledged to the payment of the principal of, premium, if any, or the interest on the bonds.

SECTION 3. This act shall become effective November 1, 2006.

Passed the House of Representatives the 2nd day of May, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of April, 2006.

Presiding Officer of the Senate