

EHB 2355

THE STATE SENATE
Monday, April 10, 2006

ENGROSSED
House Bill No. 2355
As Amended

ENGROSSED HOUSE BILL NO. 2355 - By: COOKSEY of the House and JOLLEY of the Senate.

[Oklahoma Municipal Power Authority - bonds - powers, rights and privileges - 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

1 agent, in connection with the planning, financing, acquisition,
2 construction, reconstruction, ownership, lease, operation,
3 maintenance, repair, extension or improvement of the project.

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

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

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

17 (f) The Authority may perform any act authorized by this act
18 through, or by means of, its officers, agents or employees or by
19 contract with any person, including, without limitation, the
20 employment of engineers, architects, attorneys, appraisers,
21 financial advisors and such other consultants and employees as may
22 be required in the judgment of the Board of Directors, and fix and

1 pay their compensation from funds available to the Authority
2 therefor.

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

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

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

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

16 (k) The Authority may borrow money and issue negotiable bonds,
17 secured or unsecured, in accordance with this act, and may enter
18 into interest rate swaps and other derivative products, and other
19 financial instruments intended to hedge interest rate risk or manage
20 interest rate costs, including any option to enter into or terminate
21 any of them, that the Authority deems to be necessary or desirable
22 in connection with any bonds issued prior to, at the same time as,
23 or after entering into such arrangement, and containing such terms

1 and provisions, and may be with such parties, as determined by the
2 Authority. Provided, any action taken by the Authority pursuant to
3 this subsection must first be approved by the Office of the State
4 Bond Advisor and the Council of Bond Oversight pursuant to the
5 provisions of the Oklahoma Bond Oversight and Reform Act.

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

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

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

15 (o) The Authority may contract with any person for the
16 planning, development, construction, operation, sale or lease as
17 lessor or lessee of any project or for any interest therein, on such
18 terms and for such period of time as its Board of Directors shall
19 determine.

20 (p) The Authority may contract with any eligible public agency,
21 any public trust, or any other person for the sale of power and
22 energy, transmission services, power supply development services or
23 other services within or without the State of Oklahoma on such terms

1 and conditions as the Board of Directors shall approve. Any such
2 contract may be for the sale of output and services of a particular
3 project or may be for output and services generally without regard
4 to a specific project and may be for the supply of a specific
5 quantity of output or a percentage of the output of a specific
6 project or other specific facility or may be based on the
7 requirements of the purchaser or may be on such other terms and
8 conditions as the Board of Directors deems appropriate.

9 (q) The Authority may enter into any contract or agreement
10 necessary, appropriate or incidental to the effectuation of its
11 lawful purposes and the exercise of the powers granted by this act,
12 including, without limitation, contracts or agreements for the
13 purchase, sale, exchange, interchange, wheeling, pooling,
14 transmission or storage of electric power and energy, and fuel and
15 other supplies of any kind for any such purposes, within and without
16 the State of Oklahoma, in such amounts as it shall determine to be
17 necessary and appropriate to make the most effective use of its
18 powers and to meet its responsibilities, on such terms and for such
19 period of time as the Board of Directors determines, and derivative
20 or other instruments intended to hedge fuel cost risk associated
21 with any projects or power purchases or supply arrangements of the
22 Authority, or to hedge fixed or variable interest rate exposure
23 associated with permitted investments, including any option to enter

1 into or terminate any of them, that the Authority deems to be
2 necessary or desirable, and containing such terms and provisions,
3 and may be with such parties, as determined by the Authority.

4 (r) In any case in which the Authority participates in a
5 project as a joint owner with one or more persons, the Authority may
6 enter into an agreement or agreements with respect to such project
7 with the other person or persons participating therein, and any such
8 agreement may contain such terms, conditions and provisions
9 consistent with the provisions of the act as the parties thereto
10 shall deem to be in their best interest. Any such agreement may
11 include, but need not be limited to, provisions defining what
12 constitutes a default thereunder and providing for the rights and
13 remedies of the parties thereto upon the occurrence of such a
14 default deemed appropriate by the Board of Directors including, to
15 the extent deemed appropriate, the acquisition by nondefaulting
16 parties of all or any part of the defaulting party's interest;
17 provisions setting forth such restraints on alienation of the
18 interests of the parties in the project as the Board of Directors
19 deems appropriate; provisions for the construction, operation and
20 maintenance of such electric generation or transmission facility by
21 any one or more of the parties to such agreement which party or
22 parties shall be designated in or pursuant to such agreement as
23 agent or parties thereto or by such other means as may be determined

1 by the parties thereto; and provisions for a method or methods of
2 determining and allocating, among or between the parties, costs of
3 construction, operation, maintenance, renewals, replacements,
4 improvements and disposals with respect to such project. In
5 exercising its power to participate in a project as a joint owner
6 with one or more persons, the Authority may not loan its credit to
7 any person which is a joint owner of such project; provided,
8 however, the appropriate allocations of the costs of construction,
9 operation, maintenance, renewals, replacements, improvements and
10 disposals with respect to such project between the Authority and
11 such persons shall not be a loan of credit by the Authority to such
12 persons. In carrying out its functions and activities as such agent
13 with respect to construction, operation and maintenance of a
14 project, such agent shall be governed by the laws and regulations
15 applicable to such agent as a separate legal entity and not by any
16 laws or regulations which may be applicable to any of the other
17 participating parties. Notwithstanding anything contained in any
18 other law to the contrary, pursuant to the terms of any such
19 agreement, the Authority may delegate its powers and duties with
20 respect to the construction, operation and maintenance of such
21 project to the person acting as agent; and all actions taken by such
22 agent in accordance with the provisions of such agreement may be

1 made binding upon the Authority without further action or approval
2 by the Authority.

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

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

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

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

19 (w) Notwithstanding any other provision herein seemingly to the
20 contrary, the Authority may not sell output (i) at retail to the
21 ultimate consumers thereof, (ii) to any municipality which does not
22 qualify as an eligible public agency under the definition set forth
23 in subsection (d) of Section 5-(d) 24-105 of this ~~act~~ title, or (iii)

1 to any trust created and existing under the provisions of the Local
2 Industrial Development Act, as provided by Sections 651 et seq. of
3 Title 62 of the Oklahoma Statutes, or the Trusts for Furtherance of
4 Public Functions Law, as provided by Sections 176 et seq. of Title
5 60 of the Oklahoma Statutes, which does not qualify as a public
6 trust under the definition set forth in subsection (g) of Section
7 ~~5(g)~~ 24-105 of this ~~act~~ title.

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

10 Section 24-108. A. Purposes. The Authority may issue bonds in
11 such principal amounts as the Authority deems necessary to provide
12 sufficient funds to perform any of its corporate purposes and powers
13 including, without limitation, the acquisition, construction, or
14 termination of any project to be owned or leased, as lessor or
15 lessee, by the Authority or the acquisition of any interest therein
16 or any right to the products or services thereof, the funding or
17 refunding of the principal of, redemption premium, if any, and
18 interest on, any bonds issued by the Authority whether the bonds or
19 interest to be funded or refunded have or have not become due, the
20 payment of engineering, legal, and other expenses, together with
21 interest subsequent to the estimated date of completion of the
22 project for such period of time as the Board of Directors determines
23 appropriate, the establishment or increase of reserves to secure or

1 to pay the bonds or interest thereon, the providing of working
2 capital, and the payment of, and the establishment or increase of
3 reserves for, all other costs or expenses of the Authority incident
4 to, and necessary or convenient to perform, its corporate purposes
5 and powers.

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

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

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

1 provisions of any other law limiting the amounts, maturities,
2 interest rates, or other terms of obligations of eligible public
3 agencies or private persons. The bonds shall be sold, in such
4 manner as the Board of Directors shall determine, at public or
5 private sale. The Board of Directors may also authorize bonds to be
6 issued and sold from time to time and may delegate to such officer
7 or agent of the Authority as the Board of Directors selects the
8 power to determine the time and manner of sale, public or private,
9 the maturities and rate or rates of interest which may be fixed or
10 may vary at such time or times and in accordance with a specified
11 formula or method of determination, provided that the interest cost
12 of the money received from the sale of the bonds computed to
13 maturity in accordance with standard bond tables in general use by
14 banks and insurance companies shall not exceed the maximum rate of
15 interest provided for in this section. ~~said~~ The bonds shall be
16 subject to such other terms and conditions deemed appropriate by
17 ~~said~~ the officer or agent; provided, however, that the amounts and
18 maturities of, and the interest rate or rates not exceeding the
19 maximum rate of interest provided for in this section on, ~~said~~ the
20 bonds shall be within the limits prescribed by the Board of
21 Directors in its resolution delegating to ~~said~~ the officer or agent
22 the power to authorize the sale and issuance of ~~said~~ the bonds.

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

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

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

14 H. Official Statement, Prospectus or Offering Document; Filing.
15 At least five (5) business days prior to the delivery of and payment
16 for any bonds, there shall be filed with the Secretary of State a
17 preliminary copy of the official statement, prospectus, or other
18 offering document pertaining to the issuance. Prior to the
19 expiration of fifteen (15) business days following ~~said~~ the bond
20 delivery and payment, there shall be filed with the Secretary of
21 State and the Oklahoma Securities Commission a copy, in final form,
22 of ~~said~~ the official statement, prospectus, or other offering
23 document. If no official statement, prospectus, or other offering

1 document is used in connection with the sale of ~~said~~ the bonds, in
2 lieu thereof there shall be filed a copy of the draft and final
3 proceedings of the Authority authorizing the sale and issuance of
4 the bonds.

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

- 9 1. The terms and provisions of the bonds;
- 10 2. The pledge and grant of a security interest in any personal
11 property and in all or any part of the revenue from any project or
12 any revenue-producing contract made by the Authority with any person
13 to secure the payment of bonds, subject to any agreements with the
14 holders of bonds which might then exist;
- 15 3. The custody, collection, securing, investment, and payment
16 of any revenues, assets, money, funds, or property with respect to
17 which the Authority may have any rights or interest;
- 18 4. The rates or charges for electrical energy or other services
19 rendered by the Authority, the amount to be raised by the rates or
20 charges, and the use and disposition of any or all revenue;
- 21 5. The creation of reserves or sinking funds and the regulation
22 and disposition thereof;

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

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

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

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

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

17 11. The definition of the acts or omissions to act which shall
18 constitute a default in the duties of the Authority to holders of
19 its bonds, and the rights and remedies of the holders in the event
20 of default, including, if the Authority so determines, the right to
21 accelerate the due date of the bonds or the right to appoint a
22 receiver or receivers of the property or revenues subject to the

1 lien of the bond resolution, trust indenture, or other security
2 agreement;

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

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

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

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

17 J. Any pledge of revenues, securities, contract rights, or
18 other personal property made by the Authority pursuant to the
19 provisions of the Oklahoma Municipal Power Authority Act shall be
20 valid and binding from the date the pledge is made. The revenues,
21 securities, contract rights, or other personal property so pledged
22 and then held or thereafter received by the Authority or any
23 fiduciary shall immediately be subject to the lien of the pledge

1 without any physical delivery thereof or further act, and the lien
2 of the pledge shall be valid and binding against all parties having
3 claims of any kind in tort, contract, or otherwise against the
4 Authority without regard to whether ~~said~~ the parties have notice of
5 the lien. The bond resolution, trust indenture, security agreement,
6 or other instrument by which a pledge is created need not be filed
7 or recorded in any manner.

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

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

20 M. The principal of, premium, if any, and interest upon any
21 bonds issued by the Authority shall be payable solely from the
22 revenues or funds pledged or available for their payment as
23 authorized by the provisions of the Oklahoma Municipal Power

1 Authority Act. Each bond shall contain a statement that it
2 constitutes an obligation of the Authority, that the principal
3 thereof, premium, if any, and interest thereon are payable solely
4 from revenues or funds of the Authority and that neither the State
5 of Oklahoma or any political subdivision thereof, or any eligible
6 public agency or public trust which has contracted with the
7 Authority, is obligated to pay the principal of, premium, if any, or
8 interest on the bonds and that neither the faith and credit or the
9 taxing power of the State of Oklahoma or any such political
10 subdivision thereof or of any such eligible public agency or public
11 trust is pledged to the payment of the principal of, premium, if
12 any, or the interest on the bonds.

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

14 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated 4-6-06
15 - DO PASS, As Amended.