

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2355

By: Cooksey

AS INTRODUCED

An Act relating to the Oklahoma Municipal Power Authority; amending 11 O.S. 2001, Section 24-108, which relates to the issuance of bonds by the Oklahoma Municipal Power Authority; modifying the interest cost of the money received from the sale of certain bonds; amending 74 O.S. 2001, Section 85.42, as last amended by Section 6, Chapter 342, O.S.L. 2003 (74 O.S. Supp. 2005, Section 85.42), which relates to professional service contracts with state agencies; adding the Oklahoma Municipal Power Authority to those entities allowed to enter into certain contracts; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 24-108, 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~~ 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~~ The bonds shall be subject to such other terms and conditions deemed appropriate by ~~said the~~ 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~~ 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 2. AMENDATORY 74 O.S. 2001, Section 85.42, as last amended by Section 6, Chapter 342, O.S.L. 2003 (74 O.S. Supp. 2005, Section 85.42), is amended to read as follows:

Section 85.42 A. Except as otherwise provided for in this section, any agency, whether or not such agency is subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, is prohibited from entering into a sole source contract or a contract for professional services with or for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. The provisions of this subsection shall not prohibit an agency from hiring or rehiring such person as a state employee.

B. Each contract entered into by any person or firm with the State of Oklahoma shall include an affidavit certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. This subsection shall not preclude faculty and staff of the institutions within The State System of Higher Education from negotiating and participating in research grants and educational contracts. Nor shall this subsection apply to personnel of the Capital Resources Division of the Oklahoma Department of Commerce who contract to provide services to the Oklahoma Capital Investment Board.

C. As used in this section, person is defined as any state official or employee of a department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust, school district, fair board, court, executive office, advisory group, task force, study group, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or

operating public property, and all committees, or subcommittees thereof, judges, justices, and state legislators.

D. An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf.

E. The Department of Transportation, Oklahoma Water Resources Board, Department of Environmental Quality, Oklahoma Tourism and Recreation Department, the Oklahoma ~~Transportation~~ Turnpike Authority, Oklahoma Municipal Power Authority, and the Oklahoma Department of Agriculture, Food, and Forestry may enter into a contract for professional services at any time with a person who has retired from state service, provided the provisions specified in subsection B of this section are satisfied.

F. The Department of Human Services may enter into a contract for professional services related to computer application development support and network engineering at any time with a person who has separated from state service, provided the provisions specified in subsection B of this section are satisfied.

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

50-2-8296 MD 01/10/06