

ENROLLED HOUSE
BILL NO. 2272

By: Miller, Jones, Thompson,
Coody, Cox, Denney,
Hickman, Jackson, Jett,
Liebmann, Martin (Steve),
McMullen, Peters, Sears,
Thomsen and Winchester of
the House

and

Johnson (Mike),
Crutchfield, Myers and
Adelson of the Senate

An Act relating to transportation finance; making legislative findings; authorizing issuance of certain obligations by the Oklahoma Capitol Improvement Authority; stating amount of net proceeds; imposing certain restrictions related to timing of issuance; providing for use of net proceeds; specifying authorized use of proceeds; incorporating content of Department of Transportation Construction Work Plan by reference; providing for priority of expenditures; providing for disposition of earnings; authorizing agreements between the Oklahoma Capitol Improvement Authority and the Department of Transportation; specifying content of agreements; providing for effect of redemption; authorizing borrowing of monies and issuance of negotiable obligations; stating legislative intent with respect to appropriations to the Department of Transportation; authorizing payment of certain fees and costs; authorizing issuance in series; requiring repayment from certain revenue sources; providing obligations not general obligations of the State of Oklahoma; providing full faith and credit not pledged to repayment; prescribing procedures for sale of obligations; authorizing liquidity agreements; providing for disposition of interest earnings; providing exemption

from taxation; providing for investment of proceeds; providing for applicability of certain statutory provisions; authorizing Oklahoma Capitol Improvement Authority to initiate certain judicial proceedings; amending Section 1, Chapter 444, O.S.L. 2005, as amended by Section 11, Chapter 45, 2nd Extraordinary Session, O.S.L. 2006 (69 O.S. Supp. 2007, Section 1521), which relates to the Rebuilding Oklahoma Access and Driver Safety (ROADS) Fund; modifying certain apportionment amounts related to Rebuilding Oklahoma Access and Driver Safety Fund; providing for use of certain amounts for purposes of making payments with respect to obligations issued by the Oklahoma Capitol Improvement Authority; modifying provisions related to cumulative balance of ROADS Fund; providing certain apportioned revenues not subject to certain reductions; authorizing use of revenues for payment of debt service; imposing duty upon Department of Transportation with respect to certain revenues; providing for codification; providing for noncodification; providing for severability; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature finds that anticipated growth in motor vehicle excise tax, motor vehicle registration and fees related to the motor vehicle registration process is sufficient to rely upon such growth for purposes of making payment of debt service with respect to the obligations authorized pursuant to the provisions of this act. The Legislature finds that it is not necessary to modify the apportionment of such revenue sources, but that the modifications contained in Section 3 of this act with respect to monies made available to the Department of Transportation will be adequate for that purpose.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 341 of Title 73, unless there is created a duplication in numbering, reads as follows:

A. Subject to the limitations with respect to the authorized date of issuance provided by paragraphs 1 and 2 of this subsection, the Oklahoma Capitol Improvement Authority is authorized to issue notes, bonds, or other evidences of obligation in an amount necessary to generate net proceeds of:

1. One Hundred Fifty Million Dollars (\$150,000,000.00), no earlier than August 1, 2009, after providing for costs of issuance, credit enhancement, reserves, and other associated expenses related to the financing; and

2. In addition to the amount of net proceeds specified by paragraph 1 of this subsection, One Hundred Fifty Million Dollars (\$150,000,000.00), no earlier than August 1, 2010, after providing for costs of issuance, credit enhancement, reserves, and other associated expenses related to the financing.

B. Net proceeds of the financing will be deposited into a construction fund to provide for the financing of acquisition of real property, together with improvements located thereon, and personal property, to construct, maintain and improve those state highway and state bridge assets identified in the Oklahoma Transportation Commission Construction Work Plan for the federal fiscal years 2007 through 2014 (FFY-2007 through FFY-2014) as specifically identified in the Appendix of this act and which is incorporated by reference as if fully set out herein.

C. The Transportation Commission or the Department of Transportation shall use the proceeds identified in subsection B of this section according to the priority of the enumerated project as it appears for the applicable federal fiscal year in the Construction Work Plan described in subsection B of this section in order to facilitate the completion of the enumerated projects, giving consideration to the ability to match federal funding and such other factors as the Transportation Commission or the Department of Transportation shall deem fiscally prudent.

D. Earnings that result from the investment of the construction fund may be used for the projects authorized in this section or for other legal purposes approved by the Authority.

E. The Authority and the Transportation Commission and the Department of Transportation are authorized to enter into such agreements as may be necessary to authorize the Authority to hold

title to the real and personal property and improvements until such time as any obligations issued for the purpose set forth in subsection B of this section are retired or defeased and the Authority may lease the real property and improvements to the Transportation Commission or the Department of Transportation for the purposes authorized by this section. Upon final redemption or defeasance of the obligations created pursuant to this section, title to the real and personal property and improvements shall be transferred from the Oklahoma Capitol Improvement Authority to the Transportation Commission or the Department of Transportation.

F. For the purpose of paying the costs for acquisition and construction of the real property and improvements and personal property and making the repairs, refurbishments, and improvements to real and personal property, and providing funding for the project authorized in this section, and for the purpose authorized in subsection H of this section, the Authority is hereby authorized to borrow monies on the credit of the income and revenues to be derived from the leasing of such real and personal property and improvements and, in anticipation of the collection of such income and revenues, to issue negotiable obligations in one or more series.

G. It is the intent of the Legislature to appropriate to the Department of Transportation sufficient monies to make rental payments for the purposes of retiring the obligations created pursuant to this section.

H. To the extent funds are available from the proceeds of the borrowing authorized by subsection A of this section, the Oklahoma Capitol Improvement Authority shall provide for the payment of professional fees and associated costs related to the projects authorized in this section.

I. The Authority may issue obligations in one or more series and in conjunction with other issues of the Authority. The Authority is authorized to hire bond counsel, financial consultants, and such other professionals as it may deem necessary to provide for the efficient sale of the obligations and may utilize a portion of the proceeds of any borrowing to create such reserves as may be deemed necessary and to pay costs associated with the issuance and administration of such obligations.

J. The bond indenture or other instrument pursuant to which the Oklahoma Capitol Improvement Authority becomes obligated for the repayment of principal and interest of the proceeds from the sale of

obligations authorized in subsection A of this section shall provide that all obligations are to be repaid from the source of revenue specified in this section.

K. The bonds or other obligations issued pursuant to this section shall not at any time be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision.

L. Such bonds or other obligations shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged, or may hereafter be pledged, to the payment of the principal of or the interest on such bonds.

M. The obligations authorized under this section may be sold at either competitive or negotiated sale, as determined by the Authority, and in such form and at such prices as may be authorized by the Authority. The Authority may enter into agreements with such credit enhancers and liquidity providers as may be determined necessary to efficiently market the obligations. The obligations may mature and have such provisions for redemption as shall be determined by the Authority, but in no event shall the final maturity of such obligations occur later than fifteen (15) years from the first principal maturity date.

N. Any interest earnings on funds or accounts created for the purposes of this section may be utilized as partial payment of the annual debt service or for the purposes directed by the Authority.

O. The obligations issued under this section, the transfer thereof and the interest earned on such obligations, including any profit derived from the sale thereof, shall not be subject to taxation of any kind by the State of Oklahoma, or by any county, municipality or political subdivision therein.

P. The Authority may direct the investment of all monies in any funds or accounts created in connection with the offering of the obligations authorized under this section. Such investments shall be made in a manner consistent with the investment guidelines of the State Treasurer. The Authority may place additional restrictions on the investment of such monies if necessary to enhance the marketability of the obligations.

Q. Insofar as they are not in conflict with the provisions of this section, the provisions of Section 151 et seq. of Title 73 of the Oklahoma Statutes shall apply to this section.

R. The Oklahoma Capitol Improvement Authority may initiate proceedings for purposes of validating the obligations authorized pursuant to the provisions of this section according to the provisions of Section 14.1 of Title 20 of the Oklahoma Statutes not later than one hundred twenty (120) days after the effective date of this act.

SECTION 3. AMENDATORY Section 1, Chapter 444, O.S.L. 2005, as amended by Section 11, Chapter 45, 2nd Extraordinary Session, O.S.L. 2006 (69 O.S. Supp. 2007, Section 1521), is amended to read as follows:

Section 1521. A. There is hereby created in the State Treasury a fund to be known as the "Rebuilding Oklahoma Access and Driver Safety Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all appropriations and transfers made by the Legislature. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended beginning with the fiscal year ending June 30, 2006, and each fiscal year thereafter by the Department of Transportation for the purposes authorized by subsection ~~F~~ G of this section. 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.

B. There shall be apportioned to the funds specified in this subsection from the monies that would otherwise be apportioned to the General Revenue Fund by Section 2352 of Title 68 of the Oklahoma Statutes from the revenues derived pursuant to subsections A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes amounts as follows:

1. For the fiscal year ending June 30, 2006:
 - a. the first Fifteen Million Dollars (\$15,000,000.00) shall be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund,
 - b. the next Two Million Dollars (\$2,000,000.00) shall be apportioned to the Oklahoma Tourism and Passenger Rail Revolving Fund created pursuant to Section 325 of

Title 66 of the Oklahoma Statutes to be used for capital and operating costs for the "Heartland Flyer" rail project,

- c. the next Five Hundred Thousand Dollars (\$500,000.00) shall be apportioned to the Public Transit Revolving Fund created pursuant to Section 4031 of this title to be used for purposes authorized by law other than the purpose described by subparagraph b of this paragraph, and
- d. all amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year;

2. For the fiscal year ~~ending June 30, 2007~~ beginning July 1, 2009, and for each fiscal year thereafter, subject to the provisions of paragraph 4 of this subsection, and, except for the amount prescribed by subparagraph a of this paragraph, subject to any reductions required by subsection ~~H~~ F of this section, there shall be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund:

- a. the first Thirty Million Dollars (\$30,000,000.00) which shall be allocated and used by the Department of Transportation first for the purpose of making any required payments for principal, interest or other costs of borrowing with respect to the obligations issued pursuant to Section 2 of this act and after any such required payment has been made then for the purposes otherwise authorized by this section, plus
- b. Seventy Million Dollars (\$70,000,000.00) plus the total amount apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund for the preceding fiscal year which, except for the amount prescribed by subparagraph a of this paragraph, shall be apportioned before any other amount is apportioned pursuant to Section 2352 of Title 68 of the Oklahoma Statutes, plus
- ~~b. an additional amount which shall be either:~~

- ~~(1) the next Seventeen Million Five Hundred Thousand Dollars (\$17,500,000.00) as provided by subsection C of this section, or~~
- ~~(2) the next Fifty Million Dollars (\$50,000,000.00) as provided by subsection D of this section, or~~
- ~~(3)~~

c. ~~an additional incremental amount which shall not be in excess of the amount prescribed by division (1) of this subparagraph for a fiscal year in which such amount is the maximum additional amount that may be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund and which shall not be in excess of the amount prescribed by division (2) subparagraph a of this subparagraph for a fiscal year in which such amount is the maximum additional amount that may be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund, paragraph and that is required in order for the total apportionment for such fiscal year to equal Two Hundred Seventy Million Dollars (\$270,000,000.00) Three Hundred Seventy Million Dollars (\$370,000,000.00), and~~

~~e.~~ d. all amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year except the amount specified in subparagraph a of this paragraph which amount shall be allocated in its full amount in cash not later than July 30 each year or such later date as may be required in order for the amount to be allocated in cash;

3. For the fiscal year ending June 30, 2007, and for each fiscal year thereafter after the apportionments required by paragraph 2 of this subsection have been made:

- a. the next Two Million Dollars (\$2,000,000.00) shall be apportioned to the Oklahoma Tourism and Passenger Rail Revolving Fund created pursuant to Section 325 of Title 66 of the Oklahoma Statutes to be used for capital and operating costs for the "Heartland Flyer" rail project,

- b. the next Three Million Dollars (\$3,000,000.00) shall be apportioned to the Public Transit Revolving Fund created pursuant to Section 4031 of this title to be used for purposes authorized by law other than the purpose described by subparagraph a of this paragraph, and
- c. all amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year; and

4. For each fiscal year after the first fiscal year in which the total apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund as provided by paragraph 2 of this subsection equals ~~Two Hundred Seventy Million Dollars (\$270,000,000.00)~~ Three Hundred Seventy Million Dollars (\$370,000,000.00), the first ~~Two Hundred Seventy Million Dollars (\$270,000,000.00)~~ Three Hundred Seventy Million Dollars (\$370,000,000.00) collected pursuant to subsections A, B and E of Section 2355 of Title 68 of the Oklahoma Statutes and apportioned pursuant to Section 2352 of Title 68 of the Oklahoma Statutes that would otherwise be apportioned to the General Revenue Fund shall be apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund. All With the exception of the amount prescribed by subparagraph a of paragraph 2 of this subsection, all amounts apportioned pursuant to this paragraph shall be divided into twelve equal amounts to be apportioned each month during the fiscal year.

~~C. For the fiscal year ending June 30, 2007, and for each fiscal year thereafter, in addition to the amount apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund pursuant to subparagraph a of paragraph 2 of subsection B of this section, there shall be apportioned to such fund an additional amount of Seventeen Million Five Hundred Thousand Dollars (\$17,500,000.00) for each year that the State Board of Equalization determines that any increase between the final itemized estimate of General Revenue Fund revenues made by the State Board at the February meeting preceding the beginning of the fiscal year for which that estimate is made, which is the same fiscal year during which the apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund is to be made, and the then current itemized estimate of General Revenue Fund revenues made by the State Board of Equalization for the fiscal year ending on June 30 immediately following such February meeting is less than three percent (3%).~~

~~D. For the fiscal year ending June 30, 2007, and for each fiscal year thereafter, in addition to the amount apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund pursuant to subparagraph a of paragraph 2 of subsection B of this section, there shall be apportioned to such fund an additional amount of Fifty Million Dollars (\$50,000,000.00) for each year that the State Board of Equalization determines that any increase between the final itemized estimate of General Revenue Fund revenues made by the State Board at the February meeting preceding the beginning of the fiscal year for which that estimate is made, which is the same fiscal year during which the apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund is to be made, and the then current itemized estimate of General Revenue Fund revenues made by the State Board of Equalization for the fiscal year ending on June 30 immediately following such February meeting is three percent (3%) or greater.~~

~~E. The apportionments of revenues required by subparagraphs a, b and c of paragraph 2 of subsection B of this section and the apportionment of additional revenues required by either division (1), (2) or (3) of subparagraph b of paragraph 2 of subsection B of this section, as governed by the provisions of subsection C or subsection D of this section, shall be made until the total annual apportionment to the Rebuilding Oklahoma Access and Driver Safety Fund equals ~~Two Hundred Seventy Million Dollars (\$270,000,000.00)~~ Three Hundred Seventy Million Dollars (\$370,000,000.00). After such annual apportionment level is reached, the apportionment to the fund shall be governed by the provisions of paragraph 4 of subsection B of this section.~~

~~F. D.~~ The monies apportioned to the Rebuilding Oklahoma Access and Driver Safety Fund shall not be used to supplant or replace existing state funds used for transportation purposes.

~~G. E.~~ In order to ensure that the funds from the ROADS Fund are used to enhance and not supplant state funding for the Department of Transportation, the State Board of Equalization shall examine and investigate expenditures from the fund each year. For purposes of this examination, monies used to retire outstanding debt obligations for which the Department of Transportation is responsible shall be excluded. At the meeting of the State Board of Equalization held within five (5) days after the monthly apportionment in February of each year, the State Board of Equalization shall issue a finding and report which shall state whether expenditures from the ROADS Fund were used to enhance or supplant state funding for the Department of Transportation. If the State Board of Equalization finds that state

funding for the Department of Transportation was supplanted by funds from the ROADS Fund, the Board shall specify the amount by which such funding was supplanted. In this event, the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish state funding for the Department of Transportation.

~~H. F.~~ In the event that the Director of the Office of State Finance declares a General Revenue Fund revenue failure pursuant to Section 41.9 of Title 62 of the Oklahoma Statutes, and agency allocations are reduced pursuant to the provisions of Section 41.9 of Title 62 of the Oklahoma Statutes, the amounts that would otherwise be apportioned to the ROADS Fund by ~~subparagraphs~~:

1. Subparagraphs a, b and c of paragraph 1 and subparagraphs of subsection B of this section;

2. Subparagraph a and of paragraph 2 of subsection B of this section, only to the extent that the amount is not required for debt service related to the obligations authorized pursuant to Section 2 of this act;

3. Subparagraphs b and c of paragraph 2 of subsection B of this section; and

4. Subparagraphs a and b of paragraph 3 of subsection B of this section,

shall be reduced by a percentage equal to that required of the General Revenue Fund appropriations to state agencies and such reductions shall occur during the entire fiscal year and for any month during which such reductions are required by the Office of State Finance and by the same percentage as that required of the agencies for such General Revenue Fund appropriations.

~~H. G.~~ The Department of Transportation shall use the monies in the Rebuilding Oklahoma Access and Driver Safety Fund for:

1. The construction and maintenance of state roads, bridges and highways;

2. The direct expenses of operating and maintaining the state highway system, including bridges;

3. Direct expenses incurred in constructing, repairing, and maintaining state highways, farm-to-market roads, county highways and bridges as authorized by law;

4. Matching federal funds;

5. The purchase of materials, tools, machinery, motor vehicles, and equipment necessary or convenient for the construction and maintenance of the state highway system and bridges; ~~and~~

6. Debt service incurred prior to January 1, 2006, for ~~Capitol~~ Capital Improvement Program bonds sold pursuant to Section 2001 of this title; and

7. Debt service incurred on or after July 1, 2009, with respect to obligations authorized to be issued pursuant to Section 2 of this act.

H. From the monies allocated pursuant to the provisions of subparagraph a of paragraph 2 of subsection B of this section each fiscal year, the Department of Transportation shall make payments required for the payment of principal, interest and other costs related to the obligations issued by the Oklahoma Capitol Improvement Authority as authorized by Section 2 of this act and such payments shall be made by the Department each fiscal year before such monies are used for any other purpose.

SECTION 4. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 5. This act shall become effective July 1, 2009.

Passed the House of Representatives the 23rd day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 23rd day of May, 2008.

Presiding Officer of the Senate