

ESB 1309

THE HOUSE OF REPRESENTATIVES
Monday, April 12, 2010

ENGROSSED
Senate Bill No. 1309
As Amended

ENGROSSED SENATE BILL NO. 1309 - By: ANDERSON of the Senate and ENNS of the House.

[public finance – bond oversight – Oklahoma Development Finance Authority -

emergency]

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

1 SECTION 1. AMENDATORY 62 O.S. 2001, Section 695.7, as last amended by
2 Section 1, Chapter 166, O.S.L. 2005 (62 O.S. Supp. 2009, Section 695.7), is amended to
3 read as follows:
4 Section 695.7 A. 1. The Council of Bond Oversight shall engage the services of a
5 person knowledgeable in the current state of the art of national and international
6 standards for the issuance of obligations by governmental entities and experienced in the
7 negotiation of fees for various goods and services requisite to or deemed desirable in the
8 issuance of such obligations as well as the negotiation of other matters essential to
9 provide the best current price and terms of the issuance of such obligations for the
10 benefit of Oklahoma firms, farms, individuals and local communities, who shall have the
11 title "Oklahoma State Bond Advisor".

1 2. When appointing a person to the position of Oklahoma State Bond Advisor, the
2 Council shall conduct a national search in seeking requests for proposals for the position.
3 The person selected as the Oklahoma State Bond Advisor shall be approved by an
4 affirmative vote of three of the members of the Council and appointed to the position,
5 subject to the advice and consent of the Senate.

6 3. The Oklahoma State Bond Advisor may be removed for cause by an affirmative
7 vote of three of the members of the Council, after a public hearing.

8 B. The Oklahoma State Bond Advisor may employ the necessary staff to carry out
9 the duties of the Bond Advisor and the duties of the Council, with approval of the
10 Council. Effective July 1, 2003, the Office of the State Bond Advisor shall be a separate
11 state agency as set forth in Section 695.7a of this title.

12 C. 1. Except as provided in Section 695.8 of this title, prior to engaging the services
13 of underwriters, bond or other legal counsel, financial advisors, consultants, a financial
14 institution to serve as trustee, paying agent or in any fiduciary capacity in connection
15 with any program, indenture or general resolution of the State Governmental Entity, or
16 any other experts, ~~except as provided in Section 5062.8 of Title 74 of the Oklahoma~~
17 ~~Statutes~~, the State Governmental Entity shall request proposals for such services from a
18 plurality of persons engaged in the particular activity for such services and the selection
19 of such persons shall be made on the basis of the response to the request which is the
20 most economical and will provide competent service which furthers the best interest of
21 the State Governmental Entity and the state. In negotiating requests for proposals to
22 engage such services, the State Governmental Entity shall seek the advice and

1 assistance of the Oklahoma State Bond Advisor. Under no circumstances shall
2 proprietary inducements be granted. The Oklahoma State Bond Advisor shall provide
3 assistance and advice to State Governmental Entities with respect to the issuance of
4 obligations by said State Governmental Entities, review, negotiate, and approve or
5 disapprove the fees and expenses for goods and services requisite to or deemed desirable
6 in the issuance of State Governmental Entity obligations and represent the interests of
7 the state before rating agencies and credit enhancement providers.

8 2. The provisions of this subsection shall apply to any Local Governmental Entity
9 that proposes to issue obligations to fund capital additions or expenditures which
10 obligations are to be retired by rental payments from the state, user fees from the state
11 or any other such payment made by any officer, department, board, commission,
12 institution or agency of the state. No Local Governmental Entity may utilize a lease,
13 contract, or other agreement with a State Governmental Entity as collateral or security
14 for a proposed Local Governmental Entity obligation unless such obligation has satisfied
15 all of the provisions of this section. No proceeds of any contract between a State
16 Governmental Entity and a Local Governmental Entity shall be used to retire any
17 obligations issued after the effective date of this act to fund capital additions or
18 expenditures by the Local Governmental Entity unless such obligation has satisfied all of
19 the provisions of this section.

20 D. The Oklahoma State Bond Advisor shall serve as an advisor to the Governor and
21 to the Legislature with respect to issuance of indebtedness reviewed by the Council and
22 shall prepare an annual report to be submitted to the Governor, the President Pro

1 Tempore of the Senate and the Speaker of the House of Representatives as of January 15
2 each year. The report shall contain a summary of the issuance of indebtedness by State
3 Governmental Entities and Local Governmental Entities during the preceding year and
4 such other information as the State Bond Advisor may be required to submit or as may
5 be relevant.

6 E. The Oklahoma State Bond Advisor or any member of the immediate family of
7 the Oklahoma State Bond Advisor shall not have any direct or indirect financial or
8 contractual relationship with any firm or corporation or any officer, partner or principal
9 stockholder of any firm or corporation directly involved in public finance.

10 SECTION 2. AMENDATORY 74 O.S. 2001, Section 5062.8, is amended to read
11 as follows:

12 Section 5062.8 The Oklahoma Development Finance Authority is hereby granted,
13 has and may exercise all powers necessary or appropriate to carry out and effectuate its
14 corporate purposes, including without limiting the generality thereof, the following:

- 15 1. To adopt, amend, and repeal rules and regulations, policies, and procedures for
16 the regulation of its affairs and the conduct of its business;
- 17 2. To sue and be sued in its own name;
- 18 3. To have an official seal and power to alter that seal at will;
- 19 4. To maintain an office at such place or places within this state as it may
20 designate;
- 21 5. To adopt, amend and repeal bylaws and rules and regulations, not inconsistent

22 with ~~Section 5062.1 et seq. of this title~~ the Oklahoma Development Finance Authority

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 Act, to carry into effect the powers and purposes of the Authority and the conduct of its
2 business;

3 6. To make and execute contracts with any individual, corporation, whether profit
4 or nonprofit, association or any other entity and all other instruments necessary or
5 convenient for the performance of its duties and the exercise of its powers and functions
6 under ~~Section 5062.1 et seq. of this title~~ the Oklahoma Development Finance Authority
7 Act;

8 7. To employ underwriters, bond or other legal counsel, financial advisors,
9 consultants, a financial institution to serve as trustee, paying agent or in any fiduciary
10 capacity in connection with any program, indenture or general resolution of the
11 Authority, or any other experts and to determine their qualifications, duties and
12 compensation subject to the provisions of ~~this act~~ the Oklahoma Development Finance
13 Authority Act for advice and oversight of the State Bond Advisor; provided, however,
14 after ~~the effective date of this act~~ July 1, 1987, the Authority shall not employ or contract
15 with any person, partnership, corporation, trust or other entity for underwriting services
16 for issuance of bonded indebtedness if that entity has served as financial advisor to the
17 Authority concerning the consideration of that issuance;

18 When engaging the services of underwriters, bond or other legal counsel, financial
19 advisors, consultants, a financial institution to serve as trustee, paying agent or in any
20 fiduciary capacity in connection with any program, indenture or general resolution of the
21 Authority, or any other experts, the board shall be governed by the provisions of
22 subsection C of Section 695.7 of Title 62 of the Oklahoma Statutes ~~except when engaging~~

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1 ~~such services in connection with a program whose purpose is to provide financing for a~~
2 ~~single, private entity which has previously selected providers of any such services prior~~
3 ~~to making application to the Authority, provided:~~

4 a. ~~such financing for the program shall not be backed by the Credit~~
5 ~~Enhancement Reserve Fund, and~~

6 b. ~~fees proposed for such services for the program shall fall within a~~
7 ~~range of fees as determined every six (6) months by the State Bond~~
8 ~~Advisor, based on industry studies and on fees for such services which~~
9 ~~have been negotiated and approved by the State Bond Advisor;~~

10 8. To procure insurance against any loss in connection with its property and other
11 assets in such amounts and from such insurers as it deems desirable;

12 9. To borrow money and to issue bonds, whether or not the interest thereon is to be
13 includable in the gross income of the recipients thereof for federal income tax purposes,
14 including, without limitation, to provide on a pooled or consolidated basis financing for
15 the purposes and projects herein provided and to provide for the security and sources of
16 payments therefor;

17 10. To receive and accept aid or contributions from any source of money, property,
18 labor, or other things of value to be held, used and applied to carry out the purposes of
19 ~~this act~~ the Oklahoma Development Finance Authority Act subject to the conditions upon
20 which the grants and contributions are made, including, but not limited to, gifts or
21 grants from any department, agency or instrumentality of the United States or of the

1 state for any purpose consistent with ~~Section 5062.1 et seq. of this title~~ the Oklahoma
2 Development Finance Authority Act;

3 11. To obtain from any department or agency of the United States of America or
4 nongovernmental insurer any insurance or guaranty, to the extent now or hereafter
5 available, as to, or of, or for, the payment or repayment of, interest or principal, or both,
6 or any part thereof, on any bonds issued by the Authority, or on any municipal securities
7 of political subdivisions purchased or held by the Authority, pursuant to ~~this act~~ the
8 Oklahoma Development Finance Authority Act; and, notwithstanding any other
9 provisions of ~~this act~~ the Oklahoma Development Finance Authority Act, to enter into
10 any agreement or contract whatsoever with respect to any such insurance or guaranty,
11 except to the extent that the same would in any way impair or interfere with the ability
12 of the Authority to perform and fulfill the terms of any agreement made with the owners
13 of the bonds of the Authority;

14 12. To sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its
15 property or any interest therein, wherever situated;

16 13. To provide financing assistance for the purposes and projects herein provided;

17 14. To acquire, purchase, hold, store, advertise, market, sell, trade, barter,
18 exchange, distribute, transport, process, utilize and contract in all manner with respect
19 thereto and for commodities, products and services, and real or personal property or any
20 interest therein and to contract for, issue and utilize letters of credit and other credit
21 facilities and incur indebtedness and to arrange, form, make, guarantee, issue, remit,
22 receive, receipt, process and collect payments and equivalents, howsoever nominated, in

1 connection with or for purposes of any of the foregoing and for the purpose of executing
2 and fulfilling the purposes of the Authority;

3 15. To acquire, reacquire, construct, reconstruct, extend, rent, lease, purchase, use,
4 loan, borrow, install, equip, maintain, operate, renovate, refurbish, enlarge, remodel,
5 convey, sell, at public or private sale, encumber, alleviate, transfer, exchange, dispose of
6 and/or resell, any property, real, personal or mixed, improvements, buildings, equipment,
7 chattels, furnishings, fixtures, trade fixtures, and any and all other facilities and/or
8 property of whatever nature, including any and all rights to or therein for use by
9 corporations, individuals, cooperatives, partnerships, associations or proprietary
10 companies for any of or for the purpose of executing and/or fulfilling the purposes of the
11 Authority, and to plan, establish, develop, construct, enlarge, improve, extend, maintain,
12 equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer
13 property, buildings, improvements, and facilities of every nature, which may be useful in
14 pursuing, promoting, executing and/or fulfilling the aforementioned purposes;

15 16. To the extent permitted under its contract with the owners of bonds, to consent
16 to any modification with respect to rate of interest, time, and payment of any installment
17 of principal or interest security or any other term of any contract, mortgage, contract or
18 agreement of any kind to which the Authority is a party; 17. to purchase its own bonds
19 at such price or prices as the Authority shall determine, subject to any agreement with
20 the owners of bonds;

21 18. To enter into financial documents with others for the purpose of receiving
22 revenues to pay the bonds authorized by ~~this act~~ the Oklahoma Development Finance

1 Authority Act; to lease, sell, or otherwise dispose of any or all of its projects to others for
2 such revenues and upon such terms and conditions as the Authority may deem advisable,
3 and to grant options to renew any financing agreement with respect to project and to
4 grant options to buy any project at such price or prices as the Authority deems desirable;

5 19. To lend money to the state or political subdivisions through the purchase by the
6 Authority of obligations of the state or political subdivisions;

7 20. To collect fees and charges in connection with its loans, commitments and
8 servicing, including, but not limited to, reimbursement of costs of financing as the
9 Authority shall determine to be reasonable and as shall be approved by the Authority;

10 21. To provide services, technical assistance and advice to this state and political
11 subdivisions and to enter into contracts with this state and political subdivisions to
12 provide such services. The State of Oklahoma and its political subdivisions are hereby
13 authorized to enter into contracts with the Authority for such services and to pay for
14 such services as may be provided them;

15 22. To contract, cooperate, or join with any one or more other governments or public
16 agencies, or with the state, any political subdivisions of this state, or the United States,
17 to perform any administrative service, activity, or undertaking which any such
18 contracting party is authorized by law to perform, including the issuance of bonds;

19 23. To lend money or otherwise extend credit to any person and exercise all powers
20 of a lender or creditor;

21 24. To invest any funds available to the Authority, whether or not from the
22 proceeds of bonds, in such securities or pursuant to such agreements or other

1 arrangements as the Authority shall determine, subject to any agreements with bond
2 owners or other creditors of the Authority;

3 25. To purchase, trade or sell foreign or domestic currencies or the right to acquire
4 such currency in the future; and

5 26. To exercise all other powers and functions necessary or appropriate to carry out
6 the duties and purposes set forth in ~~Section 5062.1 et seq. of this title~~ the Oklahoma
7 Development Finance Authority Act.

8 SECTION 3. It being immediately necessary for the preservation of the public
9 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
10 this act shall take effect and be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
12 dated 04-08-10 - DO PASS, As Amended.