

1 ENGROSSED SENATE
2 BILL NO. 1108

By: Anderson of the Senate

3 and

4 McDaniel (Randy) of the
5 House

6
7 [bonds - oversight - certain commissions obsolete -
8 codification - effective date]
9

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

11 SECTION 1. AMENDATORY 62 O.S. 2011, Section 695.1, is
12 amended to read as follows:

13 Section 695.1. ~~Sections 92 through 101 of this~~ This act shall
14 be known and may be cited as the "Oklahoma Bond Oversight and Reform
15 Act".

16 SECTION 2. AMENDATORY 62 O.S. 2011, Section 695.2, is
17 amended to read as follows:

18 Section 695.2. The Legislature hereby finds and declares that
19 there is a need to ~~reform current~~ establish procedures ~~regarding the~~
20 for the efficient sale and issuance of bonds or other obligations by
21 State Governmental Entities which are hereby declared to be
22 essential to the economic well-being of the state. The Legislature
23 further declares that there ~~do not currently exist any~~ are hereby
24 adopted procedures, requirements ~~or~~ and methods allowing for

1 significant systematic oversight of State Governmental Entity
2 issuers of bonds or other obligations. The Legislature further
3 declares ~~that there exists a need to establish~~ such minimal
4 oversight is essential to protect the public welfare of the State of
5 Oklahoma.

6 SECTION 3. AMENDATORY 62 O.S. 2011, Section 695.3, is
7 amended to read as follows:

8 Section 695.3. As used in the Oklahoma Bond Oversight and
9 Reform Act:

10 1. ~~"Executive Commission" means the Executive Bond Oversight~~
11 ~~Commission~~ "Council" means the Council of Bond Oversight;

12 2. ~~"Legislative Commission" means the Legislative Bond~~
13 ~~Oversight Commission;~~

14 3. ~~"Commissions" means the Executive Bond Oversight Commission~~
15 ~~and the Legislative Bond Oversight Commission;~~

16 4. "State Governmental Entity" means the State of Oklahoma or
17 any agency, board, commission, authority, department, public trust
18 of which the state is the beneficiary or other instrumentality of
19 state government, other than a public trust with the state as
20 beneficiary whose jurisdiction is limited to one county, including,
21 but not limited to, the following:

- 22 a. Oklahoma Municipal Power Authority,
- 23 b. Oklahoma Development Authority,
- 24 c. Oklahoma Industrial Finance Authority,

- d. Grand River Dam Authority,
- e. Oklahoma Water Resources Board,
- f. Northeast Oklahoma Public Facilities Authority,
- g. Oklahoma Turnpike Authority,
- h. Oklahoma Housing Finance Authority, and
- i. Oklahoma Public, Industrial and Cultural Facilities Authority;

~~5.~~ 3. "Local Governmental Entity" means counties, cities and towns, school districts, public trusts of which a county, city or town or school district is the beneficiary or other political subdivision of the state; ~~and~~

~~6.~~ 4. "Purpose" means the issuer's principal intended use of the funds derived from the issuance of bonds or other obligations; and

5. "State Governmental Entity Financing" shall include local governmental transactions where the project is leased by a State Governmental Entity or debt service is paid directly or indirectly by a State Governmental Entity or where the project or improvement is in direct support of or administered by a State Governmental Entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 695.6a of Title 62, unless there is created a duplication in numbering, reads as follows:

1 A. The Council of Bond Oversight shall consist of five (5)
2 members as follows:

3 1. One member shall be appointed by the President Pro Tempore
4 of the Senate;

5 2. One member shall be appointed by the Speaker of the House of
6 Representatives;

7 3. Two members shall be appointed by the Governor, with the
8 advice and consent of the Senate; and

9 4. The Director of State Finance shall be a member.

10 B. Three members shall constitute a quorum. The affirmative
11 vote of three members shall be necessary for any action to be taken
12 by the Council.

13 C. Members appointed to the Council shall serve a term of four
14 (4) years and may be removed for cause by the appointing authority.
15 Members may be reappointed for additional terms.

16 D. A vacancy on the Council shall be filled in the same manner
17 as the original appointment, to hold office during the unexpired
18 term for which the member was appointed. The Council shall elect
19 one of its members chair and may elect such other officers as it
20 deems necessary. No vacancy in the membership of the Council shall
21 impair the right of the Council to exercise all duties of the
22 Council.

23 E. The Oklahoma State Bond Advisor, as provided in Section
24 695.7 of Title 62 of the Oklahoma Statutes, shall provide support

1 staff as necessary to implement the purposes and functions of the
2 Council.

3 F. The Attorney General shall provide legal counsel to the
4 Council.

5 G. No member of the Oklahoma State Legislature shall be
6 eligible to serve as a member of the Council.

7 SECTION 5. AMENDATORY 62 O.S. 2011, Section 695.7, is
8 amended to read as follows:

9 Section 695.7. A. 1. The Council of Bond Oversight shall
10 engage the services of a person knowledgeable in the current state
11 of the art of national and international standards for the issuance
12 of obligations by governmental entities and experienced in the
13 negotiation of fees for various goods and services requisite to or
14 deemed desirable in the issuance of such obligations as well as the
15 negotiation of other matters essential to provide the best current
16 price and terms of the issuance of such obligations for the benefit
17 of Oklahoma firms, farms, individuals and local communities, who
18 shall have the title "Oklahoma State Bond Advisor".

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

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

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

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

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

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

1 ~~such obligation has satisfied all of the provisions of this section~~
2 Any State Governmental Entity or Local Governmental Entity proposing
3 to make a significant modification to the terms of any State
4 Governmental Entity Financing, including modification of collateral
5 by substitution, swap, or other derivative product shall first
6 obtain the written approval of the Oklahoma State Bond Advisor. If
7 the Oklahoma State Bond Advisor denies approval, the State
8 Governmental Entity or Local Governmental Entity may request the
9 Council to review and approve proposed modifications.

10 D. The Oklahoma State Bond Advisor shall serve as an advisor to
11 the Governor and to the Legislature with respect to issuance of
12 indebtedness reviewed by the Council and shall prepare an annual
13 report to be submitted to the Governor, the President Pro Tempore of
14 the Senate and the Speaker of the House of Representatives as of
15 January 15 each year. The report shall contain a summary of the
16 issuance of indebtedness by State Governmental Entities and Local
17 Governmental Entities during the preceding year and such other
18 information as the State Bond Advisor may be required to submit or
19 as may be relevant.

20 E. The Oklahoma State Bond Advisor or any member of the
21 immediate family of the Oklahoma State Bond Advisor shall not have
22 any direct or indirect financial or contractual relationship with
23 any firm or corporation or any officer, partner or principal
24

1 stockholder of any firm or corporation directly involved in public
2 finance.

3 SECTION 6. AMENDATORY 62 O.S. 2011, Section 695.7a, is
4 amended to read as follows:

5 Section 695.7a. A. ~~Beginning July 1, 2003, the Oklahoma State~~
6 ~~Bond Advisor shall cease to be a position within the Department of~~
7 ~~Central Services, and the Office of the State Bond Advisor shall be~~
8 ~~deemed a separate and distinct agency of this state. All unexpended~~
9 ~~funds, property, records, personnel, and outstanding financial~~
10 ~~obligations and encumbrances related to the position and Office of~~
11 ~~the State Bond Advisor within the Department of Central Services~~
12 ~~shall be transferred to the Office of the State Bond Advisor. All~~
13 ~~personnel shall retain their employment position and status as~~
14 ~~classified or unclassified employees, any leave, sick and annual~~
15 ~~time earned, and any retirement and longevity benefits which have~~
16 ~~accrued during tenure with the Department of Central Services.~~

17 ~~B.~~ The Oklahoma State Bond Advisor may contract with the Office
18 of Personnel Management or another state agency for payroll or other
19 administrative services.

20 ~~C.~~ ~~The Director of State Finance is hereby directed to~~
21 ~~coordinate the transfer of funds, allotments, purchase orders, and~~
22 ~~outstanding financial obligations or encumbrances provided for in~~
23 ~~subsection A of this section. The transfer of personnel shall be~~
24 ~~coordinated with the Office of Personnel Management.~~

1 ~~D.~~ B. The Office of the State Bond Advisor is authorized to
2 rent, lease, or own appropriate office space and property to conduct
3 its business.

4 SECTION 7. AMENDATORY 62 O.S. 2011, Section 695.8, is
5 amended to read as follows:

6 Section 695.8. A. The ~~Executive Bond Oversight Commission and~~
7 ~~the Legislative Bond Oversight Commission~~ Council of Bond Oversight
8 shall:

9 1. Make determinations as to whether the purposes for which
10 obligations proposed to be issued by a State Governmental Entity, in
11 conjunction with a State Governmental Entity Financing, are for the
12 furtherance and accomplishment of authorized and proper public
13 functions or purposes of the state or of any county or municipality,
14 as specified in the statutes governing public trusts organized
15 pursuant to Title 60 of the Oklahoma Statutes;

16 2. Review proposed issuance of debt by State Governmental
17 Entities for compliance with any applicable provisions of federal,
18 state or other laws;

19 3. ~~Review proposed issuances of obligations to fund capital~~
20 ~~additions or expenditures by Local Governmental Entities when there~~
21 ~~is a lease, contract, or other agreement used as collateral or~~
22 ~~security under which payments from the state made by any officer,~~
23 ~~department, board, commission, institution or agency of the state~~
24 ~~are for the retirement of such obligations. The provisions of this~~

1 ~~section do not apply to funds which are collected by the state for~~
2 ~~distribution to a Local Governmental Entity or are appropriated or~~
3 ~~dedicated by the state to a Local Governmental Entity when there is~~
4 ~~no lease, contract, or other agreement used as collateral or~~
5 ~~security requiring payments by the state, which will be used to~~
6 ~~retire obligations of said Local Governmental Entity~~ Review such
7 other matters as the Council deems relevant to the Application,
8 including, without limitation, sources of repayment and security for
9 the obligation. However, the Council shall not review the merits of
10 the project, the Council shall only determine that the project has a
11 legal and beneficial purpose which can be legitimately funded by
12 bond or similar indebtedness, issued by a State Governmental Entity
13 or Local Governmental Entity;

14 4. a. Except as provided in subparagraph b of this
15 paragraph, review the findings of the Program
16 Development and Credit Review Committee to determine
17 if the Rules Regarding the Administration of the
18 Credit Enhancement Reserve Fund and related
19 regulations and policies as implemented by the
20 Oklahoma Development Finance Authority adequately and
21 sufficiently fulfill the intents and purposes of the
22 Credit Enhancement Reserve Fund Act, ~~Section 5063.1 et~~
23 ~~seq. of Title 74 of the Oklahoma Statutes,~~ provided
24 such provision shall not apply to Credit Enhancement

1 Reserve Fund applications approved by the Bond
2 Oversight Commissions prior to May 30, 1990; and,
3 except as provided in subparagraph b of this
4 paragraph, approve or disapprove any bonds or
5 indebtedness being issued by the Oklahoma Development
6 Finance Authority to the extent said bonds or
7 indebtedness are enhanced or supported pursuant to the
8 Credit Enhancement Reserve Fund Act, ~~Section 5063.1 et~~
9 ~~seq. of Title 74 of the Oklahoma Statutes.~~

10 b. The ~~Bond Oversight Commissions~~ Council shall not be
11 required to review or approve individual projects or
12 loans under the Small Business Credit Enhancement
13 Program created by Section 5063.4b of Title 74 of the
14 Oklahoma Statutes, or the Oklahoma Beginning
15 Agricultural Producer Pool Act, ~~Section 5063.21 et~~
16 ~~seq. of Title 74 of the Oklahoma Statutes~~, but may
17 approve a package of such projects or loans in
18 advance. Each project or loan shall be individually
19 listed in the package and the dollar amount of the
20 project or loan shall be specifically set out together
21 with the total dollar amount involved in the package.
22 The ~~Commissions~~ Council or the Oklahoma State Bond
23 Advisor may, in their discretion, remove any such
24 individual project or loan from the package submitted,

1 for individual action. Should the Oklahoma
2 Development Finance Authority submit an application to
3 the ~~Commissions~~ Council for the approval of an
4 obligation or credit enhancement under these two
5 programs, the application shall be deemed approved if
6 not disapproved by the ~~Commissions~~ Council within
7 forty-five (45) days of filing such an application or,
8 as to an individual project or loan, removed from the
9 submitted package within such forty-five-day period.

10 c. The ~~Executive and Legislative Bond Oversight~~
11 ~~Commissions~~ Council may establish maximum compensation
12 levels to be paid to individuals and firms acting in a
13 fiduciary capacity in connection with Credit
14 Enhancement Reserve Fund Program financings. The
15 ~~Executive and Legislative Bond Oversight Commissions~~
16 Council may set such compensation levels for a one-
17 year period and such compensation will be applicable
18 to all individuals and firms participating in the
19 program for that period. Providers of such services
20 selected prior to making application may be employed
21 subject to the established maximum compensation
22 levels. Prior to December 31 of each year, the
23 ~~Executive and Legislative Bond Oversight Commissions~~
24 Council shall review market conditions and set new

1 compensation levels for the program. Provided, such
2 compensation levels may not exceed the compensation
3 levels obtained by the Oklahoma Development Finance
4 Authority through its most recent invitation to bid
5 for the services of individuals and firms acting in a
6 fiduciary capacity in connection with Credit
7 Enhancement Reserve Fund Program financing; and

8 5. Adopt, amend and repeal rules to regulate affairs of the
9 ~~Commissions~~ Council and to implement the powers and purposes of the
10 ~~Commissions~~ Council.

11 B. The ~~Commissions~~ Council may establish budgets in order to
12 fulfill ~~their~~ its duties pursuant to ~~Section 695.1 et seq. of this~~
13 ~~title~~ the Oklahoma Bond Oversight and Reform Act and shall be
14 authorized to charge and collect a fee, in accordance with the rules
15 of the ~~Commissions~~ Council, derived from proceeds of bond issues
16 approved by the ~~Commissions~~ Council.

17 SECTION 8. AMENDATORY 62 O.S. 2011, Section 695.9, is
18 amended to read as follows:

19 Section 695.9. A. No State Governmental Entity or Local
20 Governmental Entity shall issue any State Governmental Entity
21 Financing obligations unless such obligations have been approved by
22 the ~~Executive Bond Oversight Commission and the Legislative Bond~~
23 ~~Oversight Commission~~ Council of Bond Oversight as provided for in
24 Section 695.8 of this title; provided, however, that in no event

1 shall the ~~Commissions'~~ Council's approval be required for the
2 issuance of any obligations pursuant to a remarketing or a change in
3 interest rate or maturity under the terms of indentures or
4 agreements securing obligations heretofore issued prior to July 1,
5 1987, or pursuant to the provisions of ~~Section 695.1 et seq. of this~~
6 ~~title~~ the Oklahoma Bond Oversight and Reform Act.

7 B. 1. With respect to any ~~financing~~ State Governmental Entity
8 Financing proposed to be obtained through the issuance of its
9 obligations, any State Governmental Entity or Local Governmental
10 Entity shall file with the ~~Executive Commission and the Legislative~~
11 ~~Commission~~ Council a written description of the nature, need and
12 purpose of such proposed financing. The ~~Commissions~~ Council shall
13 review the description of the proposed financing in order to either
14 approve or disapprove the purpose to be served by the issuance of
15 said State Governmental Entity obligations and for compliance with
16 any applicable provisions of federal, state or other laws. ~~The~~
17 ~~review as to purpose shall be strictly limited to the determination~~
18 ~~provided for in Section 695.8 of this title.~~

19 2. With respect to bonds or indebtedness proposed to be issued
20 by the Oklahoma Development Finance Authority which will be enhanced
21 or supported pursuant to the Credit Enhancement Reserve Fund Act,
22 the ~~Commissions~~ Council shall review the description of such
23 proposed financing in accordance with paragraph 1 of this subsection
24 and additionally shall approve or disapprove the proposed financing

1 on a determination of sufficient compliance with the Rules Regarding
2 the Administration of the Credit Enhancement Reserve Fund as
3 implemented by the Oklahoma Development Finance Authority. Such
4 determinations by the ~~Commissions~~ Council shall be based on a
5 written report prepared for and provided to the ~~Commissions~~ Council
6 by the Program Development and Credit Review Committee as provided
7 in Section 5062.6a of Title 74 of the Oklahoma Statutes, provided
8 the ~~Commissions~~ Council shall not be bound to follow the conclusions
9 reached by the committee in such reports. ~~Provided, the provisions~~
10 ~~of this paragraph shall not apply to Credit Enhancement Reserve Fund~~
11 ~~applications approved by the Bond Oversight Commissions prior to~~
12 ~~June 9, 1990.~~

13 All orders issued by the ~~Commissions~~ Council approving or
14 disapproving bonds or indebtedness enhanced or supported pursuant to
15 the Credit Enhancement Reserve Fund Act shall be final and shall not
16 be subject to any type of appeal.

17 3. Except as provided in paragraph 4 of this subsection,
18 approval provided for in paragraph 1 of this subsection shall expire
19 one hundred eighty (180) days after such approval. Provided, if
20 such approval expires, nothing shall prevent the State Governmental
21 Entity from refileing with the ~~Commissions~~ Council for approval of
22 such financing and, if granted, any one subsequent approval of such
23 financing shall be valid for a period, not to exceed one hundred
24 eighty (180) days, as determined by the ~~Commissions~~ Council.

1 4. Applicants having received approval, as provided for in
2 paragraph 1 of this subsection, may request and the Oklahoma State
3 Bond Advisor may grant, at the Oklahoma State Bond Advisor's
4 discretion, a single one-hundred-eighty-day extension. Any request
5 for an extension must be made at least five (5) business days prior
6 to the expiration of the original approval. Applicants failing to
7 request an extension in this manner may refile with the ~~Commissions~~
8 Council as provided for in paragraph 3 of this subsection.

9 5. In the event there is a substantial change in the nature or
10 purpose of a proposed financing after approval by the ~~Commissions~~
11 Council, the prior approval shall be void and the State Governmental
12 Entity shall be required to seek approval from the ~~Commissions~~
13 Council in the manner provided in paragraph 1 of this subsection.

14 C. ~~Local Governmental Entities that propose to issue~~
15 ~~obligations to fund capital additions or expenditures which~~
16 ~~obligations are to be retired by rental payments from the state,~~
17 ~~user fees from the state or any other such payment made by any~~
18 ~~officer, department, board, commission, institution or agency of the~~
19 ~~state when such payment is a direct and expressed pledge made by the~~
20 ~~state for the retirement of debt by a Local Governmental Entity~~
21 ~~shall be governed by the provisions of subsections A and B of this~~
22 ~~section. Provided, funds which are collected by the state for~~
23 ~~distribution to a Local Governmental Entity or are appropriated or~~
24 ~~dedicated by the state to a Local Governmental Entity without the~~

1 ~~expressed purpose of retiring debt of said Local Governmental Entity~~
2 ~~shall not constitute a pledge as provided in this subsection.~~

3 ~~D. Except for the entities specified in subsection C of this~~
4 ~~section,~~ Local Governmental Entities, within ten (10) days following
5 the date funds become available to the issuer from the sale of any
6 obligation, shall file with the ~~Executive Commission and the~~
7 ~~Legislative Commission~~ Council a copy of the official statement or
8 notice of sale and any other information concerning the proposed
9 financing required by ~~either of the Commissions~~ Council.

10 ~~E.~~ D. Upon the request of a Local Governmental Entity, the
11 Oklahoma State Bond Advisor may provide advice and assistance to the
12 Local Governmental Entity with respect to the issuance of
13 obligations. The Oklahoma State Bond Advisor may assess reasonable
14 fees for such services.

15 SECTION 9. REPEALER 62 O.S. 2011, Sections 695.4, 695.5,
16 695.6 and 695.11A, are hereby repealed.

17 SECTION 10. This act shall become effective November 1, 2012.

18
19
20
21
22
23
24

1 Passed the Senate the 5th day of March, 2012.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

7
8 _____
9 Presiding Officer of the House
10 of Representatives