SENATE FLOOR VERSION
February 27, 2012
As Amended

SENATE BILL NO. 1108 By: Anderson of the Senate

and

McDaniel (Randy) of the House

[bonds - oversight - certain commissions obsolete - codification - effective date]

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

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

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

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

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

adopted procedures, requirements ~~or~~ and methods allowing for significant systematic oversight of State Governmental Entity issuers of bonds or other obligations. The Legislature further declares ~~that there exists a need to establish~~ such ~~minimal~~ oversight is essential to protect the public welfare of the State of Oklahoma.

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

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

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

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

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

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

a. Oklahoma Municipal Power Authority,

b. Oklahoma Development Authority,

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-12 - DO PASS, As Amended and Coauthored.