

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2469

By: Morrissette

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5  
6 AS INTRODUCED

7 An Act relating to public finance; enacting the  
8 Oklahoma Transportation Infrastructure Bank Act;  
9 defining terms; creating the Oklahoma Transportation  
10 Infrastructure Bank; stating purposes of Bank;  
11 directing Bank establish certain accounts; setting up  
12 board to govern Bank; providing for board membership;  
13 describing appointment of board members; stating  
14 terms of membership; outlining powers and limitations  
15 of Bank; authorizing sources of capitalization for  
16 Bank; directing how certain earnings are credited and  
17 invested; directing State Treasurer to establish  
18 accounts; allowing Bank to provide loans based on  
19 review and approval of the Council on Bond Oversight;  
20 setting forth requirements for loans; mandating  
21 criteria for board consideration of projects;  
22 outlining additional factors board may consider;  
23 permitting use of financing agreements; exempting  
24 Bank from paying certain taxes; providing for  
withholding of funds when nonpayment occurs; limiting  
certain withholding of funds; exempting liability of  
board and employees; stating notice requirements;  
directing Bank monies be deposited and invested by  
State Treasurer; requiring annual report; requiring  
annual audit by independent certified public  
accountant; providing for codification, and providing  
an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 950 of Title 62, unless there is  
3 created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma  
5 Transportation Infrastructure Bank Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 951 of Title 62, unless there is  
8 created a duplication in numbering, reads as follows:

9 As used in the Oklahoma Transportation Infrastructure Bank Act:

10 1. "Bank" means the Oklahoma Transportation Infrastructure  
11 Bank;

12 2. "Board" means the Board of Directors of the Oklahoma  
13 Transportation Infrastructure Bank;

14 3. "Bonds" means bonds, notes, or other evidence of  
15 indebtedness;

16 4. "Department" means the Department of Transportation;

17 5. "Eligible cost" means as applied to a qualified project to  
18 be financed from the federal accounts, the costs that are permitted  
19 under applicable federal laws, requirements, procedures, and  
20 guidelines in regard to establishing, operating, and providing  
21 assistance from the Bank. As applied to a qualified project to be  
22 financed from the state highway account, these costs include the  
23 costs of preliminary engineering, traffic and revenue studies,  
24 environmental studies, right-of-way acquisition, legal and financial

1 services associated with the development of the qualified project,  
2 construction, construction management, facilities, and other costs  
3 necessary for the qualified project. As applied to any qualified  
4 project to be financed from the state transit account, eligible  
5 project costs are limited to capital expenditures for transit  
6 equipment and facilities;

7 6. "Eligible project" means a highway, including bridges, or  
8 transit project which provides public benefits by either enhancing  
9 mobility and safety, promoting economic development, or increasing  
10 the quality of life and general welfare of the public. "Eligible  
11 project" also includes but is not limited to mass transit, such as  
12 monorail and monobeam mass transit systems;

13 7. "Federal accounts" means collectively, the separate account  
14 for federal highway funds and federal transit funds;

15 8. "Financing agreement" means any agreement entered into  
16 between the Bank and a qualified borrower pertaining to a loan or  
17 other financial assistance. This agreement may contain, in addition  
18 to financial terms, provisions relating to the regulation and  
19 supervision of a qualified project, or other provisions as the Board  
20 may determine. The term "financing agreement" includes, but is not  
21 limited to, a loan agreement, trust indenture, security agreement,  
22 reimbursement agreement, guarantee agreement, bond or note,  
23 ordinance or resolution, or similar instrument;

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1       9. "Government unit" means a city, town, municipality, county,  
2 or another public body, instrumentality or agency of the state  
3 including combinations of two or more of these entities acting  
4 jointly to construct, own, or operate a qualified project, and any  
5 other state or local authority, board, commission, agency,  
6 department, or other political subdivision which may construct, own,  
7 or operate a qualified project;

8       10. "Loan" means an obligation subject to repayment which is  
9 provided by the Bank to a qualified borrower for all or a part of  
10 the eligible cost of a qualified project. A loan may be disbursed  
11 in anticipation of reimbursement for or direct payment of eligible  
12 costs of a qualified project;

13       11. "Loan obligation" means a bond, note, or other evidence of  
14 an obligation issued by a qualified borrower;

15       12. "Other financial assistance" means, but is not limited to,  
16 grants, contributions, credit enhancement, capital or debt reserves  
17 for bonds or debt instrument financing, interest rate subsidies,  
18 provision of letters of credit and credit instruments, provision of  
19 bond or other debt financing instrument security, and other lawful  
20 forms of financing and methods of leveraging funds that are approved  
21 by the Board, and in the case of federal funds, as allowed by  
22 federal law;

23       13. "Private entity" means a private person or entity that has  
24 entered into a contract with a government unit to design, finance,

1 construct, and operate a highway, bridge, tunnel, or approach that  
2 is within the jurisdiction of the government unit that is  
3 responsible for complying with applicable federal requirements;

4 14. "Project revenues" means all rates, rents, fees,  
5 assessments, charges, and other receipts derived or to be derived by  
6 a qualified borrower from a qualified project or made available from  
7 a special source, and, as provided in the applicable financing  
8 agreement, derived from any system of which the qualified project is  
9 a part of, from any other revenue producing facility under the  
10 ownership or control of the qualified borrower including, without  
11 limitation, proceeds of grants, gifts, appropriations and loans,  
12 including the proceeds of loans made by the Bank, investment  
13 earnings, reserves for capital and current expenses, proceeds of  
14 insurance or condemnation and proceeds from the sale or other  
15 disposition of property and from any other special source as may be  
16 provided by the qualified borrower;

17 15. "Qualified borrower" means any government unit or private  
18 entity which is authorized to construct, operate, or own a qualified  
19 project;

20 16. "Qualified project" means an eligible project which has  
21 been selected by the Bank to receive a loan or other financial  
22 assistance from the Bank to defray an eligible cost;

23 17. "Revenues" means, when used with respect to the Bank, any  
24 receipts, fees, income, or other payments received or to be received

1 by the Bank including, without limitation, receipts and other  
2 payments deposited in the Bank and investment earnings on its funds  
3 and accounts; and

4 18. "State accounts" means, collectively, the separate account  
5 for state highway funds and state transit funds.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 952 of Title 62, unless there is  
8 created a duplication in numbering, reads as follows:

9 A. The Oklahoma Transportation Infrastructure Bank shall be  
10 created as a public body corporate and politic and an  
11 instrumentality of the state.

12 B. The Bank shall be governed by a board of directors as  
13 provided in the Oklahoma Transportation Infrastructure Bank Act.

14 C. The corporate purpose of the Bank is to select and assist in  
15 financing major qualified projects by providing loans and other  
16 financial assistance to government units and private entities for  
17 constructing and improving highway and transportation facilities  
18 necessary for public purposes including economic development. The  
19 exercise by the Bank of a power conferred in the Oklahoma  
20 Transportation Infrastructure Bank Act is an essential public  
21 function.

22 D. The Bank shall establish and maintain at least the four  
23 following accounts: state highway account, state transit account,  
24 federal highway account, and federal transit account.

1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 953 of Title 62, unless there is  
3 created a duplication in numbering, reads as follows:

4 The Board of Directors of the Oklahoma Transportation  
5 Infrastructure Bank shall be the governing board of the Bank. The  
6 Board shall consist of seven (7) voting directors as follows: the  
7 Director of the Department of Transportation, ex officio; the State  
8 Banking Commissioner, ex officio; and five directors appointed by  
9 the Governor. Directors appointed by the Governor shall serve terms  
10 coterminous with the Governor. The chairman and vice-chairman shall  
11 be elected by the Board. Any person appointed to fill a vacancy  
12 shall be appointed for the remainder of the unexpired term.

13 SECTION 5. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 954 of Title 62, unless there is  
15 created a duplication in numbering, reads as follows:

16 A. In addition to the powers contained elsewhere in the  
17 Oklahoma Transportation Infrastructure Bank Act, the Oklahoma  
18 Transportation Infrastructure Bank shall have all power necessary,  
19 useful, or appropriate to fund, operate, and administer the Bank,  
20 and to perform its other functions including, but not limited to,  
21 the power to:

- 22 1. Have perpetual succession;
- 23 2. Adopt, promulgate, amend, and repeal rules, not inconsistent  
24 with provisions in the Oklahoma Transportation Infrastructure Bank

1 Act for the administration of the Bank's affairs and the  
2 implementation of its functions including the right of the Board to  
3 select qualifying projects and to provide loans and other financial  
4 assistance;

5 3. Sue and be sued in its own name;

6 4. Have a seal and alter it at its pleasure, although the  
7 failure to affix the seal shall not affect the validity of an  
8 instrument executed on behalf of the Bank;

9 5. Make loans to qualified borrowers to finance the eligible  
10 costs of qualified projects and to acquire, hold, and sell loan  
11 obligations at prices and in a manner as the Board of Directors of  
12 the Oklahoma Transportation Infrastructure Bank determines  
13 advisable;

14 6. Provide qualified borrowers with other financial assistance  
15 necessary to defray eligible costs of a qualified project;

16 7. Enter into contracts, arrangements, and agreements with  
17 qualified borrowers and other persons and execute and deliver all  
18 financing agreements and other instruments necessary or convenient  
19 to the exercise of the powers granted in the Oklahoma Transportation  
20 Infrastructure Bank Act;

21 8. Enter into agreements with a department, agency, or  
22 instrumentality of the United States or of this state or another  
23 state for the purpose of planning and providing for the financing of  
24 qualified projects;



1       9. Establish:

2           a. policies and procedures for the making and  
3                 administering of loans and other financial assistance,  
4                 and

5           b. fiscal controls and accounting procedures to ensure  
6                 proper accounting and reporting by the Bank,  
7                 government units, and private entities;

8       10. Acquire by purchase, lease, donation, or other lawful means  
9 and sell, convey, pledge, lease, exchange, transfer, and dispose of  
10 all or any part of its properties and assets of every kind and  
11 character or any interest in it to further the public purpose of the  
12 Bank;

13       11. Procure insurance, guarantees, letters of credit, and other  
14 forms of collateral or security or credit support from any public or  
15 private entity, including any department, agency, or instrumentality  
16 of the United States or this state, for the payment of any bonds  
17 issued by the Bank, including the power to pay premiums or fees on  
18 any insurance, guarantees, letters of credit, and other forms of  
19 collateral or security or credit support;

20       12. Collect or authorize the trustee under any trust indenture  
21 securing any bonds to collect amounts due under any loan obligations  
22 owned by the Bank, including taking the action required to obtain  
23 payment of any sums in default;

1 13. Unless restricted under any agreement with holders of  
2 bonds, consent to any modification with respect to the rate of  
3 interest, time, and payment of any installment of principal or  
4 interest, or any other term of any loan obligations owned by the  
5 Bank;

6 14. Borrow money through the issuance of bonds and other forms  
7 of indebtedness as provided in the Oklahoma Transportation  
8 Infrastructure Bank Act;

9 15. Expend funds to obtain accounting, management, legal,  
10 financial consulting, and other professional services necessary to  
11 the operations of the Bank;

12 16. Expend funds credited to the Bank as the Board determines  
13 necessary for the costs of administering the operations of the Bank;

14 17. Establish advisory committees as the Board determines  
15 appropriate, which may include individuals from the private sector  
16 with banking and financial expertise;

17 18. Procure insurance against losses in connection with its  
18 property, assets, or activities of the Bank including insurance  
19 against liability for the acts of the Bank or the acts of employees  
20 or agents of the Bank or to establish cash reserves to enable the  
21 Bank to act as a self-insurer against any and all such losses;

22 19. Collect fees and charges in connection with loans or other  
23 financial assistance;

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1       20. Apply for, receive and accept from any source, aid, grants,  
2 and contributions of money, property, labor, or other things of  
3 value to be used to carry out the purposes of the Oklahoma  
4 Transportation Infrastructure Bank Act subject to the conditions  
5 upon which the aid, grants, or contributions are made;

6       21. Enter into contracts or agreements for the servicing and  
7 processing of financial agreements; and

8       22. Do all other things necessary or convenient to exercise  
9 powers granted by the Oklahoma Transportation Infrastructure Bank  
10 Act.

11       B. The Bank shall not be authorized or empowered to be or to  
12 constitute a bank or trust company within the jurisdiction or under  
13 the control of the state or the Comptroller of the Currency or the  
14 Treasury Department of the United States, or a bank, banker, or  
15 dealer in securities within the meaning of, or subject to the  
16 provisions of, any securities, securities exchange, or securities  
17 dealers' law of the United States or this state.

18       C. The Bank shall be subject to the provisions of the  
19 Administrative Procedures Act in Title 75 of the Oklahoma Statutes.

20       SECTION 6.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 955 of Title 62, unless there is  
22 created a duplication in numbering, reads as follows:

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1 The following sources may be used to capitalize the Oklahoma  
2 Transportation Infrastructure Bank and for the Bank to carry out its  
3 purposes:

- 4 1. Federal funds made available to the state;
- 5 2. Federal funds made available to the state for the Bank;
- 6 3. Contributions and donations from government units, private  
7 entities, and any other source as may become available to the Bank  
8 including, but not limited to, appropriations from the Legislature;
- 9 4. All monies paid or credited to the Bank, by contract or  
10 otherwise, payments of principal and interest on loans or other  
11 financial assistance made from the Bank, and interest earnings which  
12 may accrue from the investment or reinvestment of the Bank's monies;
- 13 5. Proceeds from the issuance of bonds;
- 14 6. Other lawful sources as determined appropriate by the Board  
15 of Directors of the Oklahoma Transportation Infrastructure Bank; and
- 16 7. Loans from the Department of Transportation to the Bank to  
17 be repaid from revenues committed to the Bank for the following  
18 year.

19 SECTION 7. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 956 of Title 62, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. Earnings on balances in the federal accounts shall be  
23 credited and invested according to federal law. Earnings on state  
24 accounts shall be credited to the state highway account or state

1 transit account that generates the earnings. The Oklahoma  
2 Transportation Infrastructure Bank may establish accounts and  
3 subaccounts within the state accounts and federal accounts as  
4 considered desirable to effectuate the purposes of the Oklahoma  
5 Transportation Infrastructure Bank Act, or to meet the requirements  
6 of any state or federal programs. All accounts shall be held in  
7 trust by the State Treasurer.

8 B. For necessary and convenient administration of the Bank, the  
9 Board of Directors of the Oklahoma Transportation Infrastructure  
10 Bank shall direct the State Treasurer to establish federal and state  
11 accounts and subaccounts within the Bank necessary to meet any  
12 applicable federal law requirements or as the Bank shall determine  
13 necessary or desirable in order to implement the provisions of the  
14 Oklahoma Transportation Infrastructure Bank Act.

15 C. The Bank shall comply with all applicable federal laws and  
16 regulations prohibiting the commingling of certain federal funds  
17 deposited in the Bank.

18 SECTION 8. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 957 of Title 62, unless there is  
20 created a duplication in numbering, reads as follows:

21 A. The Oklahoma Transportation Infrastructure Bank may provide  
22 loans and other financial assistance to a government unit or private  
23 entity to pay for all or part of the eligible cost of a qualified  
24 project. Prior to providing a loan or other financial assistance to

1 a qualified borrower, the Board of Directors of the Oklahoma  
2 Transportation Infrastructure Bank shall obtain the review and  
3 approval of the Council of Bond Oversight. The term of the loan or  
4 other financial assistance shall not exceed the useful life of the  
5 project. The Bank may require the government unit or private entity  
6 to enter into a financing agreement in connection with the loan  
7 obligation or other financial assistance. The Board shall determine  
8 the form and content of loan applications, financing agreements, and  
9 loan obligations including the term and rate or rates of interest on  
10 a financing agreement. The terms and conditions of a loan or other  
11 financial assistance from federal accounts shall comply with  
12 applicable federal requirements.

13 B. The Board shall determine which projects are eligible  
14 projects and then select from among the eligible projects those  
15 qualified to receive from the Bank a loan or other financial  
16 assistance. Preference shall be given to eligible projects which  
17 have local financial support. In selecting qualified projects, the  
18 Board shall consider the projected feasibility of the project and  
19 the amount and degree of risk to be assumed by the Bank. The Board  
20 also may consider, but shall not be limited to, the following  
21 criteria in making its determination that an eligible project is a  
22 qualified project:

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1        1. The local support of the project, expressed by resolutions  
2 by the governing bodies in the areas in which the project will be  
3 located, and the financial or in-kind contributions to the project;

4        2. Maximum economic benefit, enhancement of mobility,  
5 enhancement of public safety, acceleration of project completion,  
6 and enhancement of transportation services;

7        3. The ability of the applicant to repay a loan according to  
8 the terms and conditions established pursuant to the Oklahoma  
9 Transportation Infrastructure Bank Act, consideration of which may  
10 include, at the option of the Board, the existence of current  
11 investment grade rating on existing debt of the applicant secured by  
12 the same revenues to be pledged to secure repayment under the loan  
13 repayment agreement;

14        4. The financial or in-kind contributions to the project;

15        5. Greater weighting in recommending priorities for eligible  
16 projects to areas of the state experiencing high unemployment; and

17        6. Whether the governing bodies of the area in which the  
18 project is to be located provides to the Bank a resolution which  
19 makes a finding that the project is essential to economic  
20 development in the area.

21        SECTION 9.        NEW LAW        A new section of law to be codified  
22 in the Oklahoma Statutes as Section 958 of Title 62, unless there is  
23 created a duplication in numbering, reads as follows:

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1       A. Qualified borrowers shall obtain loans or other financial  
2 assistance from the Oklahoma Transportation Infrastructure Bank  
3 through financing agreements. Qualified borrowers entering into  
4 financing agreements and issuing loan obligations to the Bank may  
5 perform any acts, take any action, adopt any proceedings, and make  
6 and carry out any contracts or agreements with the Bank as may be  
7 agreed to by the Bank and any qualified borrower for the carrying  
8 out of the purposes contemplated by the Oklahoma Transportation  
9 Infrastructure Bank Act.

10       B. In addition to the authorizations contained in the Oklahoma  
11 Transportation Infrastructure Bank Act, all other statutes or  
12 provisions in the Oklahoma Statutes permitting government units to  
13 borrow money and issue obligations may be utilized by any government  
14 unit in obtaining a loan or other financial assistance from the Bank  
15 to the extent determined necessary or useful by the government unit  
16 in connection with any financing agreement and the issuance,  
17 securing, or sale of loan obligations to the Bank.

18       C. A qualified borrower may receive, apply, pledge, assign, and  
19 grant security interest in project revenues, and, in the case of a  
20 governmental unit, its project revenues or revenues derived from a  
21 special source, to secure its obligations, and may fix, revise,  
22 charge, and collect fees, rates, rents, assessments, and other  
23 charges of general or special application for the operation or  
24 services of a qualified project, the system of which it is a part,



1 and any other revenue producing facilities from which the qualified  
2 borrower derives project revenues, to meet its obligations under a  
3 financing agreement or to provide for the construction or improving  
4 of a qualified project.

5 SECTION 10. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 959 of Title 62, unless there is  
7 created a duplication in numbering, reads as follows:

8 The Oklahoma Transportation Infrastructure Bank is performing an  
9 essential governmental function in the exercise of the powers  
10 conferred upon it and shall not be required to pay taxes or  
11 assessments upon property or upon its operations or the income from  
12 them, or taxes or assessments upon property or loan obligations  
13 acquired or used by the Bank or upon the income from them.

14 SECTION 11. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 960 of Title 62, unless there is  
16 created a duplication in numbering, reads as follows:

17 A. If a government unit fails to collect and remit in full all  
18 amounts due to the Oklahoma Transportation Infrastructure Bank on  
19 the date these amounts are due under the terms of any note or other  
20 obligation of the government unit, the Bank shall notify the State  
21 Treasurer who shall withhold all or a portion of the funds of the  
22 state and all funds administered by the state, its agencies, Boards,  
23 and instrumentalities allotted or appropriated to the government  
24 unit and apply an amount necessary to the payment of the amount due.

1 B. Nothing contained in this section mandates the withholding  
2 of funds allocated to a government unit or private entity which  
3 would violate contracts to which the state is a party, the  
4 requirements of federal law imposed on the state, or judgments of a  
5 court binding on the state.

6 SECTION 12. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 961 of Title 62, unless there is  
8 created a duplication in numbering, reads as follows:

9 Neither the Board of Directors of the Oklahoma Transportation  
10 Infrastructure Bank nor any officer, employee, or committee of the  
11 Oklahoma Transportation Infrastructure Bank acting on behalf of the  
12 Bank, while acting within the scope of this authority, is subject to  
13 any liability resulting from carrying out any of the powers given in  
14 the Oklahoma Transportation Infrastructure Bank Act.

15 SECTION 13. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 962 of Title 62, unless there is  
17 created a duplication in numbering, reads as follows:

18 Notice, proceeding, or publication, except those required in the  
19 Oklahoma Transportation Infrastructure Bank Act, shall not be  
20 necessary to the performance of any deed authorized in this act nor  
21 is any action of the Oklahoma Transportation Infrastructure Bank  
22 subject to any referendum.

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1 SECTION 14. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 963 of Title 62, unless there is  
3 created a duplication in numbering, reads as follows:

4 All money of the Oklahoma Transportation Infrastructure Bank,  
5 except as provided in the Oklahoma Transportation Infrastructure  
6 Bank Act, shall be deposited with and invested by the State  
7 Treasurer. Funds of the Bank not needed for immediate use or  
8 disbursement may be invested by the State Treasurer in obligations  
9 or securities which are declared to be legal obligations. All  
10 federal funds shall be invested as required by applicable federal  
11 law.

12 SECTION 15. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 964 of Title 62, unless there is  
14 created a duplication in numbering, reads as follows:

15 Following the close of each state fiscal year, the Oklahoma  
16 Transportation Infrastructure Bank shall submit an annual report of  
17 its activities for the preceding year to the Governor and to the  
18 Oklahoma Legislature. The Bank shall also submit an annual report  
19 to the appropriate federal agency in accordance with requirements of  
20 any federal program. An independent certified public accountant  
21 shall perform an audit of the books and accounts of the Bank at  
22 least once during each state fiscal year.

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SECTION 16. This act shall become effective November 1, 2012.

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