

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 865

By: Gumm

COMMITTEE SUBSTITUTE

An Act relating to public finance; creating the Local Development Financing Act; providing short title; describing purposes of act; defining terms; authorizing state issuer to pool certain debt issuances authorized by cities, towns and counties pursuant to the Oklahoma Local Development Act; establishing primary activities under the act; providing responsibilities of Administrator; authorizing state issuer to invest funds in specified obligations or to offer certain guarantee; establishing criteria for certain pooled issuances; requiring certain review of local issuances and of pooled issuances; provides for minimum amount of obligations and requires specified guarantee; provides for status of certain guarantee; authorizing certain investments by specified entities or persons; clarifying necessity for exercising reasonable care in making certain investments; amending 74 O.S. 2001, Sections 855, 858, 5063.4, 5063.4a, and 5063.4i, which relate to the Oklahoma Industrial Finance Authority and the Credit Enhancement Reserve Fund; modifying and establishing new powers of Oklahoma Industrial Finance Authority; establishing new provision required as part of certain loan application; clarifying references; including Local Development Financing Act as part of certain category; including obligations issued pursuant to Local Development Financing Act with those for which certain Authority may take specified action; modifying allocation of certain funds; requiring Oklahoma Development Finance Authority to make specified allocation; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5102 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 3 of this act shall be known and may be

cited as the "Local Development Financing Act".

B. The purpose of the Local Development Financing Act shall be to augment and enhance Section 6C of Article X of the Oklahoma Constitution by:

1. Assisting local communities, especially rural and smaller towns and counties, to undertake economic development activities;

2. Providing an urgently needed and meaningful financial resource to assist such communities with economic development endeavors; and

3. Creating marketability for tax apportionment financing vehicles under the Local Development Act.

C. As used in this act:

1. "Administrator" means a public trust created pursuant to Section 176 of Title 60 of the Oklahoma Statutes or an organization exempt from federal income tax pursuant to Title 26, Section 501 (c) (3) of the United States Code, where such trust has as its purpose the reduction of regulatory burdens and assistance with the enhancement of the quality of life for Oklahoma citizens; and

2. "State issuer" means any public trust organized pursuant to Title 60 of the Oklahoma Statutes for the benefit of the entire State of Oklahoma, which had Seven Hundred Fifty Million Dollars (\$750,000,000.00) or more of issued and outstanding indebtedness in 1987, and such indebtedness has been issued for three or more distinct purposes and which has as a primary purpose economic development financing of state industries and public facilities, including, but not limited to, infrastructure in Oklahoma's communities.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5103 of Title 74, unless there is created a duplication in numbering, reads as follows:

A state issuer is authorized to issue a debt obligation which pools issuances of other public entities authorized by a

municipality, town or county to issue tax apportionment or tax increment bonds, notes, or other forms of obligations pursuant to the Local Development Act; or which attract private investment into the pooled issuance of the state issuer by either the direct investment of Oklahoma Development Finance Authority funds or by providing a guarantee for debt service of the pooled issuance for the purpose of implementing the Local Development Financing Act established pursuant to this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5104 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The primary activities of the state issuer shall be to:

1. Enhance local community development financing pursuant to the Local Development Act;

2. Utilize private and public resources to build a more comprehensive and efficient public and private financing infrastructure for communities in this state that are enhancing their facilities and expanding their economies;

3. Act as an investor, insurer and/or guarantor of business capital and debt financing on behalf of communities in this state;

4. Inform and partner with business entities and investors of available public obligations resulting from pooling obligations as set out in this act; and

5. Fulfill the state issuer's goals and functions by serving as a purchaser and as a guarantor of the obligations of political subdivisions' designated public entities that are to be repaid in whole or in part with the apportioned tax increments pursuant to the Local Development Act.

B. The Administrator shall be responsible for establishing, implementing, and coordinating economic development and financing programs for communities pursuant to the objectives and authority of this act and propose such financing programs to the state issuer.

C. The state issuer may invest funds directly in the state issuer's pooled obligations pursuant to this section or may offer a guarantee backed by an allocation of the Credit Enhancement Reserve Fund pursuant to Section 5063.4i of Title 74 of the Oklahoma Statutes.

D. Pooled issuances by the state issuer pursuant to this section shall represent a diversity of communities and investment activities. Each local issuance that is part of the pool shall be reviewed by the Program Development and Credit Review Committee created by Section 5062.6a of Title 74 of the Oklahoma Statutes.

E. Pooling issuances by the state issuer pursuant to this section shall be reviewed by the Council of Bond Oversight.

F. The state issuer shall issue its pooling obligations for a minimum of Ten Million Dollars (\$10,000,000.00). Pooled issuances shall be guaranteed or insured in whole or in part by the allocation or guarantee fund created pursuant to Section 42 of Article X of the Oklahoma Constitution.

G. Any guarantee provided by the state issuer under this section shall be considered an obligation pursuant Section 42 of Article X of the Oklahoma Constitution. The state issuer is authorized to issue other obligations in the form of bonds, notes, or other evidences of indebtedness, or to obtain letters of credit to raise funds for investment under this section.

H. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest in sinking funds, moneys, or other funds belonging to them or within their control in any notes or other obligations issued under the Local Development Financing Act.

Such notes, bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, including the state, its political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such notes, bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 855, is amended to read as follows:

Section 855. The Oklahoma Industrial Finance Authority, as a public corporation and governmental instrumentality exercising public powers of the State of Oklahoma, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

(a) To cooperate with industrial development agencies in their efforts to promote the expansion of industrial and manufacturing activity in the state, including efforts utilizing the Local Development Financing Act pursuant to Sections 1, 2 and 3 of this act;

(b) To determine, upon proper application of industrial development agencies, whether the declared public purpose of this act has been or will be accomplished by the establishment of such industrial development projects by such industrial development agencies;

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to the establishment of industrial development projects hereunder or other determinations related to exercise of the Authority's lawful powers;

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such Authority, or before one or more members of the Authority appointed by it to conduct such hearing;

(e) To apply to any court having jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear;

(f) To authorize any member or members of such Authority to conduct hearings and to administer oaths, take affidavits and subpoenas;

(g) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of monies held in the Industrial Development Fund for industrial development projects in Oklahoma, and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter provided;

(h) To sue and be sued, implead and be impleaded, complain and defend in all courts;

(i) To adopt, use, and alter at will a corporate seal;

(j) To adopt bylaws for the management and regulation of its affairs; and to promulgate and issue rules and regulations governing its operations;

(k) To appoint officers, agents, and employees, and to prescribe their duties and to fix their compensation, within the limitations prescribed by laws;

(l) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(m) To contract with private legal counsel when its Board of Directors determines that special circumstances merit the services of such counsel and when approved by the Attorney General; provided,

in all other circumstances, the Attorney General shall advise and represent the Authority on legal matters;

(n) Without limitation of the foregoing, to accept grants from and enter into contracts or other transactions with, any federal agency; ~~and~~

(o) To take title by foreclosure to any industrial development project where such acquisition is necessary to protect any loan previously made by the Authority, and to sell, transfer and convey any such industrial development project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the Authority may, in order to minimize financial losses and sustain employment, lease such industrial development project to a responsible tenant or tenants; the Authority shall not lease industrial development projects except under the conditions and for the purposes cited in this section; and

(p) To increase local development in Oklahoma communities by investing in pooled bond issuances pursuant to the Local Development Financing Act for purposes of enhancing the marketability of bonds supported in whole or in part by tax apportionment financing authorized by local economic development entities and cities, towns and counties to the extent possible and pursuant to the Oklahoma Industrial Finance Authority Act.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 858, is amended to read as follows:

Section 858. Prior to the loaning of any funds to an industrial development agency for an industrial development project, the Authority shall receive from such industrial development agency a loan application in the form adopted by the Authority which shall contain, without being limited to, the following provisions:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing

enterprise for which the industrial development project has been or is to be established;

(b) A legal description of all real estate necessary for the industrial development project;

(c) Such plans and other documents as may be required to show the type, structure, and general character of the industrial development project;

(d) A general description of the type (types and categories of skills) and number of employees employed or to be employed in the operation of the industrial development project;

(e) Evidence that the Authority shall have a purchase money security interest in any moveable machinery financed by the Authority;

(f) Costs or estimates of cost of establishing the industrial development project;

(g) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the industrial project;

(h) A statement of cash funds previously applied, or then held by the industrial development agency which are available for and are to be applied to the establishment of the industrial development project;

(i) Evidence of the arrangement made by the industrial development agency for the financing of all costs of the industrial development project over and above the participation of the industrial development agency;

(j) A general description of the responsible tenant to which the industrial development agency has leased or will lease the industrial development project or of the responsible buyer to which the industrial development agency has sold or will sell the project;

(k) A general description of the form of lease or sales agreement entered into or to be entered into by and between the industrial development agency and its responsible tenant or responsible buyer;

(l) Evidence that the establishment of the industrial development project will not cause the removal of an industrial or manufacturing plant or facility from one area of the state to another area of the state, or replace an existing industry;

(m) Any additional evidence which the Authority may deem pertinent to a determination of the probable successful operation of the industrial development project at the selected location, and indicating that a substantial increase in employment and payrolls will probably result from the granting of such loans; and

(n) For pooled issuances pursuant to the Local Development Financing Act, the application form shall be filed for each project that is for an industrial or manufacturing enterprise. Only that part or series of the pooled issuance shall be eligible for investment by the Oklahoma Industrial Finance Authority.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 5063.4, is amended to read as follows:

Section 5063.4 A. The Fund shall be employed by the Oklahoma Development Finance Authority solely to secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, for the specific purpose of enhancing and supporting the credit of such revenue bonds and other financial obligations. Such other financial obligations may include guarantees, loans, letters of credit or other similar obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, and may include commitments by the Authority for the Fund to secure loans made by private financial institutions. Except for the financial obligation provided in

~~Section 5 of this act and Section~~ Sections 5062.8a and 5063.4i of this title and Section 2 of this act, each such other financial obligation must be secured by a first lien security interest on real estate, equipment or inventory, and, except as provided in ~~Section 5 of this act and~~ Sections 855, 5062.8a, 5063.4i and 5063.4b of this title and Section 2 of this act, the amount of the commitment by the Fund shall not exceed twenty-five percent (25%) of the value of the collateral securing each such financial transaction. No portion of the monies or other assets deposited to the Fund shall be expended or otherwise used by the Authority in meeting its day-to-day operating expenses, in paying the cost of issuance of the Authority's revenue bonds or other financial obligations, or in supporting any other activity of the Authority not directly related to the Credit Enhancement Reserve Fund or to enhancing the credit of the Authority's revenue bonds and other financial obligations.

B. The Authority shall administer the Fund prudently and according to good insurance practice. Such administration will minimize the loss experience of the Fund, assure the future viability of the Fund, and assure the continuing availability of the proceeds of general obligation bonds issued pursuant to Section 5063.11 of this title as a credit enhancement vehicle for bond issues in this state on an ongoing basis. Accordingly, the granting of credit enhancement by the Fund shall be based on principles of insurability generally applied in the credit enhancement/insurance industry. The Authority is authorized and directed to adopt initial rules and regulations governing the credit enhancement activities and administration of the Fund, including rules and regulations dealing with the subjects of project feasibility, credit evaluation, collateral evaluation, reinsurance, maximum risk retention by the Fund, avoidance of adverse risk selection, and all other factors deemed relevant by the Authority to the decision whether the Fund

should provide credit enhancement to a particular issue of debt, to what extent, on what terms, and for what premium rate.

C. The initial rules and regulations for administration of the Fund promulgated by the Authority pursuant to subsection B of this section shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

D. No general obligation bonds may be issued pursuant to Section 5063.11 of this title except upon the approval by a vote of the people of the State of Oklahoma authorizing the Oklahoma Development Finance Authority to issue general obligation bonds for the purposes set forth in this act and unless and until initial rules and regulations governing administration of the Fund have been adopted by the Authority. The Authority by resolution or other appropriate action of the Authority shall determine each issue of bonds or portions thereof with respect to which the benefits of the act shall inure.

E. The Authority is authorized to amend the initial rules and regulations governing administration of the Fund, either by addition of new rules and regulations, or a change or repeal of existing rules and regulations; provided, that such amendment, whether by addition, change or repeal, shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

F. Except as provided in subparagraph b of paragraph 4 of subsection A of Section 695.8 of Title 62 of the Oklahoma Statutes, credit enhancement by the Fund for any bonds or other financial obligations issued by the Authority pursuant to law shall also require approval of the ~~Executive Bond Oversight Commission and the Legislative Bond Oversight Commission~~ Council of Bond Oversight as provided by law.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 5063.4a, is amended to read as follows:

Section 5063.4a A. Credit enhancement granted by the Oklahoma Development Finance Authority shall be categorized by use as portfolio mix categories as follows:

1. Industrial, agribusiness, and other private activity;
2. Infrastructure and other publicly owned facilities of governmental entities;
3. Health care and other nonprofit-owned facilities; ~~and~~
4. The Quality Jobs Investment Program established pursuant to ~~Section 5 of this act~~ 5062.8a of this title; and
5. The Local Development Financing Act established pursuant to Sections 1, 2 and 3 of this act.

B. The balance, as determined by the total principal amount authorized pursuant to Section 5063.11 of this title less the amount of Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to June 9, 1990, less the amount allocated pursuant to Section 5063.4i of this title, shall be allocated to the portfolio mix categories as follows:

1. Twenty-five percent (25%) of said balance shall be allocated to the industrial, agribusiness, and other private activity portfolio mix category; and
2. Seventy-five percent (75%) of said balance shall be allocated to the infrastructure and other publicly owned facilities of governmental entities portfolio mix category, health care and other nonprofit-owned facilities portfolio mix category; provided, no more than twenty percent (20%) of this allocation may be used for health care and other nonprofit-owned facility projects.

C. The Authority is authorized to credit, enhance and secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued pursuant to the Oklahoma Development Finance Authority Act, the Local Development

Financing Act pursuant to Sections 1, 2 and 3 of this act and the Credit Enhancement Reserve Fund Act. Except as used for the Small Business Credit Enhancement Program, the original principal amount of a credit enhancement commitment of the Authority granted to obligations in the industrial, agribusiness, and other private activity portfolio mix category shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

D. To maximize use of the credit enhancement resource and to assure the viability of the Fund, the Fund shall have a balanced portfolio by loan size. In the case of the industrial, agribusiness, and other private activity portfolio mix category, the Fund shall strive to achieve a cumulative average loan size of less than One Million Dollars (\$1,000,000.00).

E. Notwithstanding the allocations required in subsection B of this section, credit enhancement of debt obligation issued pursuant to the Local Development Financing Act shall be the first priority for credit enhancement using the state's constitutional authority.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 5063.4i, is amended to read as follows:

Section 5063.4i Forty percent (40%) of the amount authorized pursuant to Section 5063.11 of this title is hereby allocated and may be used for the Quality Jobs Investment Program pursuant to ~~Section 5 of this act~~ 5062.8a of this title and the Local Development Financing Act pursuant to Sections 1, 2 and 3 of this act. The Oklahoma Development Finance Authority shall begin, upon the effective date of this act, to allocate such amount equally between the Quality Jobs Investment Program and the Local Development Financing Act.

SECTION 9. This act shall become effective July 1, 2004.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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