

FIRST REGULAR SESSION

HOUSE BILL NO. 722

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE O'DONNELL.

1765H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 108.170, RSMo, and to enact in lieu thereof one new section relating to bonds.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 108.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 108.170, to read as follows:

108.170. 1. Notwithstanding any other provisions of any law or charter to the contrary, any issue of bonds, notes, or other evidences of indebtedness, including bonds, notes, or other evidences of indebtedness payable solely from revenues derived from any revenue-producing facility, hereafter issued under any law of this state by any county, city, town, village, school district, educational institution, drainage district, levee district, nursing home district, hospital district, library district, road district, fire protection district, water supply district, sewer district, housing authority, land clearance for redevelopment authority, special authority created under section 64.920, authority created pursuant to the provisions of chapter 238, or other municipality, political subdivision or district of this state shall be negotiable~~[-];~~; may be issued in ~~[bearer]~~ **book-entry** form or registered form with or without coupons to evidence interest payable thereon~~[-];~~; may be issued in any denomination~~[-, and]~~; may bear interest at a rate not exceeding ten percent per annum~~[-];~~; and may be sold, at any sale, at the ~~[best price]~~ **lowest true interest cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value thereof, anything in any proceedings heretofore had authorizing such bonds, notes, or other evidence of indebtedness, or in any law of this state or charter provision to the contrary notwithstanding. Such issue of bonds, notes, or other evidence of indebtedness may bear interest at a rate not exceeding fourteen percent per annum if sold at

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 public sale after giving reasonable notice of such sale, at the ~~[best price]~~ **lowest true interest**
19 **cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value thereof **and not more**
20 **than one hundred twenty percent of the par value thereof**; provided[;] that such bonds,
21 notes, or other evidence of indebtedness may be sold to any agency or corporate or other
22 instrumentality of the state of Missouri or of the federal government at private sale at a rate
23 not exceeding fourteen percent per annum. If a political subdivision has an unenhanced bond
24 rating ~~[of AA+ or higher, or comparable rating,]~~ **that is one of the two highest long-term**
25 **ratings or the highest short-term rating issued by a nationally recognized rating agency**
26 on its outstanding general obligation bonds or is proposing to issue general obligation bonds
27 with an unenhanced bond rating ~~[of AA+ or higher, or comparable rating]~~ **that is one of the**
28 **two highest long-term ratings or the highest short-term rating issued by a nationally**
29 **recognized rating agency**, the new issue of general obligation bonds shall be issued through
30 a competitive process unless the political subdivision employs the services of a municipal
31 advisor, in which case the political subdivision may use a negotiated or competitive process,
32 except that such requirements shall not apply to any general obligation bonds:

33 (1) Sold, pursuant to written agreement, to the government of the United States of
34 America or of the state of Missouri or to any bureau, department, body corporate,
35 instrumentality, or agency of the United ~~[State]~~ **States** of America or the state of Missouri;

36 (2) Where the principal amount of the bonds issued does not exceed ~~[twelve]~~ **twenty**
37 million ~~[five hundred thousand]~~ dollars; or

38 (3) That are issued or are part of an issue issued to refinance a prior issue of general
39 obligation indebtedness or which are issued contemporaneously with any such issue of
40 refunding bonds; provided, the refunding bonds shall not exceed the principal of the
41 outstanding indebtedness to be refunded and the accrued interest to the date of such refunding
42 bonds.

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44 A municipal advisor shall not be allowed to profit financially or otherwise, either directly or
45 indirectly, from the underwriter of a negotiated bond issuance.

46 2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the
47 sale of bonds, notes, or other evidence of indebtedness issued by the state board of public
48 buildings created under section 8.010, the state board of fund commissioners created under
49 section 33.300, any port authority created under section 68.010, the bi-state metropolitan
50 development district authorized under section 70.370, any special business district created
51 under section 71.790, any county, as defined in section 108.465, exercising the powers
52 granted by sections 108.450 to 108.470, the ~~[industrial development]~~ **Missouri development**
53 **finance** board created under section 100.265, any planned industrial expansion authority
54 created under section 100.320, the higher education loan authority created under section

55 173.360, the Missouri housing development commission created under section 215.020, the
56 state environmental improvement and energy resources authority created under section
57 260.010, the agricultural and small business development authority created under section
58 348.020, any industrial development corporation created under section 349.035, or the health
59 and educational facilities authority created under section 360.020 shall, with respect to the
60 sales price, manner of sale and interest rate, be governed by the specific sections applicable to
61 each of these entities.

62 3. Any person who is engaged as a municipal advisor by a political corporation or
63 subdivision with respect to a particular issue of securities shall be independent of the
64 underwriter of that issue of securities. For the purposes of this section, "municipal advisor"
65 shall be either:

66 (1) A person registered as a municipal advisor under the rules of the United States
67 Securities and Exchange Commission; or

68 (2) A person who is a chief financial officer of a school district and either:

69 (a) Is a certified public accountant; or

70 (b) Has a masters of business administration and is certified as an administrator of
71 school finance and operations by the Association of School Business Officials International.

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73 For the purposes of this subsection, "independent" shall have the same meaning as defined by
74 the rules of the United States Securities and Exchange Commission. In determining the
75 individuals or entities that may serve as a municipal advisor, nothing in this section shall be
76 construed to be more restrictive than the definition of a municipal advisor as established by
77 the United States Securities and Exchange Commission.

78 4. Notwithstanding other provisions of this section or other law, the sale of bonds,
79 notes, or other evidence of indebtedness issued by any housing authority created under
80 section 99.040 may be sold at any sale, at the best price obtainable, not less than ~~[ninety-five]~~
81 **fifty percent of the par value thereof and not more than one hundred twenty percent of the**
82 **par value thereof**, and may bear interest at a rate not exceeding fourteen percent per annum.
83 The sale shall be a public sale unless the issuing jurisdiction adopts a resolution setting forth
84 clear justification why the sale should be a private sale except that private activity bonds may
85 be sold either at public or private sale.

86 5. Notwithstanding other provisions of this section or law, industrial development
87 revenue bonds may be sold at private sale and bear interest at a rate not exceeding fourteen
88 percent per annum at the ~~[best price]~~ **lowest true interest cost** obtainable, not less than
89 ~~[ninety-five]~~ **fifty percent of the par value thereof and not more than one hundred twenty**
90 **percent of the par value thereof.**

91 6. Notwithstanding other provisions in subsection 1 of this section to the contrary,
92 revenue bonds issued for airport purposes by any constitutional charter city in this state which
93 now has or may hereafter acquire a population of more than three hundred thousand but less
94 than six hundred thousand inhabitants, according to the last federal decennial census, may
95 bear interest at a rate not exceeding fourteen percent per annum if sold at public sale after
96 giving reasonable notice, at the ~~[best price]~~ **lowest true interest cost** obtainable, not less than
97 ~~[ninety-five]~~ **fifty** percent of the par value thereof **and not more than one hundred twenty**
98 **percent of the par value thereof.**

99 7. For purposes of the interest rate limitations set forth in this section, the interest rate
100 on bonds, notes or other evidence of indebtedness described in this section means the rate at
101 which the present value of the debt service payments on an issue of bonds, notes or other
102 evidence of indebtedness, discounted to the date of issuance, equals the original price at
103 which such bonds, notes or other evidence of indebtedness are sold by the issuer. Interest on
104 bonds, notes or other evidence of indebtedness may be paid periodically at such times as shall
105 be determined by the governing body of the issuer and may be compounded in accordance
106 with section 408.080.

107 8. Notwithstanding any provision of law or charter to the contrary:

108 (1) Any entity referenced in subsection 1 or 2 of this section and any other political
109 corporation of the state which entity or political corporation has an annual operating budget
110 for the current year exceeding twenty-five million dollars may, in connection with managing
111 the cost to such entity or political corporation of purchasing fuel, electricity, natural gas, and
112 other commodities used in the ordinary course of its lawful operations, enter into agreements
113 providing for fixing the cost of such commodity, including without limitation agreements
114 commonly referred to as hedges, futures, and options; provided that as of the date of such
115 agreement, such entity or political corporation shall have complied with subdivision (3) of
116 this subsection; and further provided that no eligible school **entity**, as defined in section
117 393.310, shall be authorized by this subsection to enter into such agreements in connection
118 with the purchase of natural gas while the tariffs required under section 393.310 are in effect;

119 (2) Any entity referenced in subsection 1 or 2 of this section and any other political
120 corporation of the state may, in connection with its bonds, notes, or other obligations then
121 outstanding or to be issued and bearing interest at a fixed or variable rate, enter into
122 agreements providing for payments based on levels of or changes in interest rates, including
123 without limitation certain derivative agreements commonly referred to as interest rate swaps,
124 hedges, caps, floors, and collars, provided that:

125 (a) As of the date of issuance of the bonds, notes, or other obligations to which such
126 agreement relates, such entity or political corporation will have bonds, notes, or other
127 obligations outstanding in an aggregate principal amount of at least fifty million dollars; and

128 (b) As of the date of such agreement, such entity's or political corporation's bonds,
129 notes, or other obligations then outstanding or to be issued have received a stand-alone credit
130 rating in one of the two highest categories, without regard to any gradation within such
131 categories, from at least one nationally recognized credit rating agency, or such entity or
132 political corporation has an issuer or general credit rating, in one of the two highest
133 categories, without regard to any gradation within such categories, from at least one
134 nationally recognized credit rating agency; and

135 (c) As of the date of such agreement, such entity or political corporation shall have
136 complied with subdivision (3) of this subsection;

137 (3) Prior to entering into any agreements pursuant to subdivision (1) or (2) of this
138 subsection, the governing body of the entity or political corporations entering into such
139 agreements shall have adopted a written policy governing such agreements. Such policy shall
140 be prepared by integrating the recommended practices published by the Government Finance
141 Officers Association or comparable nationally recognized professional organization and shall
142 provide guidance with respect to the permitted purposes, authorization process, mitigation of
143 risk factors, ongoing oversight responsibilities, market disclosure, financial strategy, and any
144 other factors in connection with such agreements determined to be relevant by the governing
145 body of such entity or political corporation. Such entity or political corporation may enter
146 into such agreements at such times and such agreements may contain such payment, security,
147 default, remedy, and other terms and conditions as shall be consistent with the written policy
148 adopted under this subdivision and as may be approved by the governing body of such entity
149 or other obligated party, including any rating by any nationally recognized rating agency and
150 any other criteria as may be appropriate;

151 (4) Nothing in this subsection shall be applied or interpreted to authorize any such
152 entity or political corporation to enter into any such agreement for investment purposes or to
153 diminish or alter the special or general power any such entity or political corporation may
154 otherwise have under any other provisions of law including the special or general power of
155 any interstate transportation authority.

156 9. The state treasurer shall make available to municipalities, political subdivisions, or
157 districts listed under subsection 1 of this section relevant information regarding debt issuance
158 and bidding processes, including best practices resources published by a national association
159 of government finance officers on debt issuance, to aid such entities with the process of
160 issuing debt and awarding bonds to the best bidder.

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