

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 749

By: Rader

6 AS INTRODUCED

7 An Act relating to public finance; amending 62 O.S.  
8 2011, Section 891.3, as amended by Section 1, Chapter  
9 179, O.S.L. 2013 (62 O.S. Supp. 2018, Section 891.3),  
10 which relates to definitions for the Oklahoma  
11 Community Economic Development Pooled Finance Act;  
12 adding definitions; amending 62 O.S. 2011, Section  
13 891.15, as amended by Section 468, Chapter 304,  
14 O.S.L. 2012 (62 O.S. Supp. 2018, Section 891.15),  
15 which relates to the Community Economic Development  
16 Pooled Finance Revolving Fund; adding revenue source  
17 to the credit of the Fund; authorizing stated  
18 Authority to act as conduit issuer for benefit of  
19 certain entities for certain projects using the  
20 Public-Private Partner Development Pool; limiting  
21 amount of obligations authorized to be issued;  
22 stating purpose of certain Pool; requiring certain  
23 percentage of Pool proceeds to benefit certain  
24 entities based on population; providing for  
application of federal law for taxation of  
obligations; requiring Oklahoma Department of  
Commerce to promulgate rules for certain purposes;  
requiring entity to establish a scoring system for  
certain evaluation; requiring scoring system to  
include certain considerations; requiring certain  
entities to apply for certain financing for specific  
project; requiring Department to maintain certain  
list and the Authority to use the list; requiring  
Authority to provide proceeds in accordance with the  
scoring system; providing definitions; requiring  
eligible entity to obtain a determination letter from  
certain entity for specified purposes; requiring  
entity to use certain analysis and information for  
determination letter; authorizing use of information  
for certain purposes; authorizing local government to  
capture certain taxes under certain circumstances;

1                   requiring transmission of letter to certain entities;  
2                   prohibiting certain use of captured taxes; stating  
3                   exception for specific use of captured tax; requiring  
4                   certain agreements between entities under certain  
5                   circumstances; authorizing Authority to approve  
6                   amount and duration of segregation of certain taxes  
7                   for certain purposes; authorizing Authority to obtain  
8                   certain information for certain purposes; requiring  
9                   Oklahoma Tax Commission to make determination of  
10                  deposit amounts of taxes credited to certain fund;  
11                  requiring Oklahoma Tax Commission to make certain  
12                  deposit in accordance with applicable agreements;  
13                  prohibiting certain entities from receiving certain  
14                  monies or tax credits under certain circumstances;  
15                  exempting certain entities from certain tax under  
16                  certain circumstances; providing for codification;  
17                  and providing an effective date.

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

19                  SECTION 1.           AMENDATORY           62 O.S. 2011, Section 891.3, as  
20                  amended by Section 1, Chapter 179, O.S.L. 2013 (62 O.S. Supp. 2018,  
21                  Section 891.3), is amended to read as follows:

22                  Section 891.3. 1. "Authority" means the Oklahoma Development  
23                  Finance Authority;

24                  2. "Bonds" means any form of obligation issued by the Oklahoma  
25                  Development Finance Authority pursuant to this act;

26                  3. "Business entity" means a corporation, limited liability  
27                  company, general partnership, limited partnership, or such other  
28                  entity conducting a lawful activity which is organized pursuant to  
29                  the laws of the state or which is authorized to do business in the  
30                  state if organized under the law of another jurisdiction;

1       4. "Community Economic Development Pooled Finance Revolving  
2 Fund" means the fund created pursuant to Section 891.15 of this  
3 title;

4       5. "Conduit issuer" means the Oklahoma Development Finance  
5 Authority acting for the benefit of either a combination of local  
6 government entities or a local government entity or entities in  
7 conjunction with a for-profit business entity pursuant to the  
8 provisions of this act;

9       6. "Credit Enhancement Reserve Fund" means that fund created  
10 pursuant to Section 5063.3 of Title 74 of the Oklahoma Statutes;

11       7. "Debt" means bonds, notes, or other evidence of indebtedness  
12 issued by the Oklahoma Development Finance Authority;

13       8. "Department" means the Oklahoma Department of Commerce;

14       9. "Economic Development Pool" means proceeds of obligations  
15 sold by the Authority to provide resources for eligible local  
16 government entities or a local government entity in conjunction with  
17 a for-profit business entity to finance an eligible economic  
18 development project or other purposes authorized by this act;

19       10. "Eligible local government entity" means:

20           a. a city,

21           b. a town,

22           c. a county,

23           d. any combination of cities, towns, or counties, or

1                   e. a public trust with a beneficiary or beneficiary which  
2                   is a city, town, county or some combination of such  
3                   entities as authorized by Section 176 of Title 60 of  
4                   the Oklahoma Statutes;

5                   11. "Federal government defense entities" means U.S. Department  
6                   of Defense installations in the State of Oklahoma including Fort  
7                   Sill, Tinker Air Force Base, Altus Air Force Base, Vance Air Force  
8                   Base and McAlester Army Ammunition Plant;

9                   12. "For-profit business" means any lawful activity conducted  
10                  by a business entity with the goal or expectation of selling goods,  
11                  services or other property at a price greater than the actual costs  
12                  incurred by the business;

13                  12. 13. "Infrastructure" means:

- 14                  a. county roads,
- 15                  b. county bridges,
- 16                  c. municipal streets,
- 17                  d. municipal bridges,
- 18                  e. any railway or utility system owned by an eligible  
19                    local government entity,
- 20                  f. water treatment facilities,
- 21                  g. solid waste management facilities,
- 22                  h. water treatment and distribution systems, or
- 23                  i. any asset or project identified by the eligible local  
24                    government entities necessary for essential government

functions if the asset is owned by a local government entity or entities;

13. 14. "Infrastructure Pool" means proceeds of obligations sold by the Authority to provide resources for eligible local government entities to provide financing for infrastructure or other purposes authorized by this act;

14. 15. "Pooled financing" means an agreement, pursuant to the provisions of this act or pursuant to the Interlocal Cooperation Act, among two or more eligible local governmental entities or involving a local government entity or entities in conjunction with a for-profit business entity to use proceeds from a tax levy or other authorized source of revenue to make payments of principal, interest, and other related costs in connection with an obligation issued by the Oklahoma Development Finance Authority for the benefit of the entities entering into such agreement according to the terms of the agreement and according to the requirements of any ballot submitted to the voters of the respective eligible local governmental entities. Pooled financing does not mean or include the use of any ad valorem tax revenues derived from a levy imposed pursuant to Section 26 of Article X of the Oklahoma Constitution; and

15. 16. "Private activity bonds" means those obligations the  
interest income from which may be exempt from federal income tax

1 pursuant to the provisions of the Internal Revenue Code of 1986, as  
2 amended; and

3       17. "Public-Private Partner Development Pool" means proceeds of  
4       obligations sold by the Oklahoma Development Finance Authority to  
5       provide resources for eligible local government entities to provide  
6       financing for infrastructure in conjunction with for-profit business  
7       entities and federal government defense entities or any other  
8       purpose authorized by this act.

9       SECTION 2.       AMENDATORY       62 O.S. 2011, Section 891.15, as  
10      amended by Section 468, Chapter 304, O.S.L. 2012 (62 O.S. Supp.  
11      2018, Section 891.15), is amended to read as follows:

12      Section 891.15. There is hereby created in the State Treasury a  
13      revolving fund for the Oklahoma Development Finance Authority to be  
14      designated the "Community Economic Development Pooled Finance  
15      Revolving Fund". The fund shall be a continuing fund, not subject  
16      to fiscal year limitations, and shall consist of all monies received  
17      by the Oklahoma Development Finance Authority from revenues derived  
18      from levies imposed by counties, cities, towns or combinations of  
19      such local governmental entities as provided by this act in addition  
20      to any withholding tax revenues as provided by Section 891.12 of  
21      this title or Section 5 of this act. All monies accruing to the  
22      credit of said fund are hereby appropriated and may be budgeted and  
23      expended by the Oklahoma Development Finance Authority for the  
24      purpose of paying principal, interest and other costs of borrowing

1 by the Authority as authorized by this act. Expenditures from said  
2 fund shall be made upon warrants issued by the State Treasurer  
3 against claims filed as prescribed by law with the Director of the  
4 Office of Management and Enterprise Services for approval and  
5 payment.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 891.16 of Title 62, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. The Oklahoma Development Finance Authority shall be  
10 authorized to act as a conduit issuer for the benefit of at least  
11 one eligible local government entity in conjunction with one or more  
12 for-profit business entities and/or federal government defense  
13 entities for an authorized infrastructure development project using  
14 the Public-Private Partner Development Pool.

15 B. The Authority shall be authorized to issue obligations in  
16 order to provide net proceeds on a pooled basis not to exceed the  
17 combined Economic Development Pool and Infrastructure Development  
18 Pool amount authorized by Sections 891.7 and 891.8 of this title.  
19 The Authority shall be authorized to issue obligations within the  
20 limit prescribed by this subsection based upon the defeasance of  
21 previously issued obligations.

22 C. The proceeds from the Public-Private Partner Development  
23 Pool shall be for the purpose of providing financing for an eligible  
24 local government entity for an authorized infrastructure project

1 located in this state that will benefit one or more business  
2 entities located in this state.

3       D. Sixty-five percent (65%) of the net proceeds from the  
4 Public-Private Partner Development Pool shall be used by the  
5 Authority for the benefit of eligible local government entities the  
6 population of which, according to the most recent Federal Decennial  
7 Census, does not exceed three hundred thousand (300,000) persons for  
8 any participating municipality.

9       E. Thirty-five percent (35%) of the net proceeds from the  
10 Public-Private Partner Development Pool may be used by the Authority  
11 for the benefit of any and all eligible local government entities  
12 regardless of population.

13       F. Obligations issued pursuant to the provisions of this  
14 section may be issued on a tax-exempt basis if the applicable  
15 provisions of federal law governing private activity bonds allow  
16 such issuance. In the event federal law does not allow issuance of  
17 obligations on a tax-exempt basis, such obligations shall be issued  
18 on a taxable basis.

19                   SECTION 4.        NEW LAW        A new section of law to be codified  
20 in the Oklahoma Statutes as Section 891.17 of Title 62, unless there  
21 is created a duplication in numbering, reads as follows:

22       A. The Oklahoma Department of Commerce shall promulgate rules  
23 for purposes of establishing criteria for the funding of authorized  
24 infrastructure projects from the proceeds of obligations issued by

1 the Oklahoma Development Finance Authority for the Public-Private  
2 Partner Development Pool.

3       B. The Department shall establish a scoring system to evaluate  
4 projects to be financed from the proceeds of obligations issued by  
5 the Authority for the Public-Private Partner Development Pool.

6       C. The scoring system shall include, but shall not be limited  
7 to, analysis of:

8           1. Capital investment by one or more for-profit business  
9 entities and/or federal government defense entities;

10           2. Additional capital investment by one or more local  
11 government entities;

12           3. New direct jobs as defined by Section 3603 of Title 68 of  
13 the Oklahoma Statutes, to be created by a for-profit business entity  
14 or entities;

15           4. Salary and wage payments to persons employed in new direct  
16 jobs; and

17           5. The likelihood of additional business location decisions  
18 resulting from the activity of the for-profit business entity or  
19 entities that would benefit from use of the Public-Private Partner  
20 Development Pool.

21       D. One or more eligible local government entities shall apply  
22 to the Department for approval of a pooled financing for an  
23 infrastructure project on such terms as the Department may  
24 prescribe.

1       E. The Department shall compile and maintain a prioritized list  
2 of infrastructure projects eligible for pooled financing through the  
3 Authority.

4       F. The Authority shall use the prioritized list provided by the  
5 Department in order to provide financing to the eligible local  
6 government entities in conjunction with one or more for-profit  
7 business entity or entities for infrastructure development.

8       G. The Authority shall, within the limit on available bond  
9 proceeds in the Development Infrastructure Pool, provide proceeds in  
10 accordance with the scoring system established by the Department  
11 pursuant to this section.

12      SECTION 5.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 891.18 of Title 62, unless there  
14 is created a duplication in numbering, reads as follows:

15      A. As used in this section:

16       1. "Estimated direct state benefits" means the tax revenues  
17 projected by the Oklahoma Department of Commerce to accrue to the  
18 state as a result of new direct jobs and capital spending associated  
19 with one or more for-profit business entities, federal government  
20 defense entities and infrastructure development by one or more local  
21 government entities;

22       2. "Estimated indirect state benefits" means the indirect new  
23 tax revenues projected by the Department to accrue to the state  
24 including, but not limit to, revenue generated from ancillary

1 support jobs directly related to the new direct jobs, capital  
2 spending and infrastructure spending;

3       3. "Estimated direct state costs" means the costs projected by  
4 the Department to accrue to the state as a result of new direct  
5 jobs. The costs shall include, but not be limited to:

- 6       a. the costs of education for new state resident  
7                children,
- 8       b. the costs of public health, public safety and  
9                transportation services to be provided to new state  
10              residents,
- 11      c. the costs of other state services to be provided to  
12              new state residents, and
- 13      d. the costs of other state services; and

14       4. "Estimated indirect state costs" means the costs projected  
15 by the Department to accrue to the state as a result on new indirect  
16 jobs. The costs shall include, but not be limited to, costs  
17 enumerated in subparagraphs a, b, c and d of paragraph 3 of this  
18 subsection.

19       B. An eligible local government entity in partnership with one  
20 or more for-profit business entities and/or federal government  
21 defense entities that would otherwise qualify to receive or benefit  
22 from proceeds from the issuance of obligations by the Authority from  
23 the Public-Private Partner Development Pool shall be required to  
24 obtain a determination letter from the Department that the

1 infrastructure development will result in a positive net benefit  
2 rate, to be computed by the Department using a methodology which  
3 provides for the analysis of estimated indirect state costs. The  
4 Department shall use such information as it determines to be  
5 relevant for the analysis required by this subsection including, but  
6 not limited to, the type of infrastructure development, the business  
7 activities in which the participating for-profit business entities  
8 are engaged or will be engaged, the amount of capital investment,  
9 type of assets acquired or utilized by the participating business  
10 entities, economic effect of the business activity within the  
11 relevant geographic region and any other factors as the Department  
12 deems relevant. The Department may use information regarding the  
13 infrastructure development alone or in conjunction with relevant  
14 information regarding other business activity in a geographically  
15 relevant area surrounding the infrastructure development or the  
16 location of the participating for-profit business entities in order  
17 to perform the computation of the net benefit rate. If the result  
18 of the analysis is a positive net benefit rate, the applying local  
19 government entity shall be allowed to capture withholding taxes  
20 associated with new jobs or with existing jobs associated with the  
21 participating for-profit business entities as otherwise provided by  
22 this act. The Department shall transmit a determination letter to  
23 the authorized representative of the local government entity and  
24 shall also transmit a copy of the determination letter to the

1 Oklahoma Tax Commission and to the Oklahoma Development Finance  
2 Authority notwithstanding the positive or negative result of the net  
3 benefit rate. The Authority shall not allow a local government  
4 entity to use captured withholding tax revenues for purposes of any  
5 pooled financing otherwise authorized by this act unless the  
6 Department has previously transmitted a determination letter that  
7 reveals a positive net benefit rate for the Public-Private Partner  
8 Development Pool project.

9 C. Any for-profit business entity that participates in the  
10 Public-Private Partner Development Pool may be required by the  
11 applicable local government entity to enter into such agreements as  
12 may be required between the entity, the local government entity, the  
13 Authority and the Oklahoma Tax Commission to provide for the  
14 segregation of withholding taxes.

15 D. The amount of withholding taxes subject to the provisions of  
16 this section shall, together with other revenue sources or  
17 commitments and undertakings by the for-profit business entity or  
18 third parties, be sufficient to make payment of any required  
19 principal, interest, adequate reserves or other authorized costs for  
20 borrowing by the Authority.

21 E. The Authority shall have the power of approval regarding the  
22 amount and duration of withholding tax segregation pursuant to the  
23 provisions of this section in order to ensure payment of its  
24 obligations and to promote the marketability of such obligations.

1       F. The Authority shall obtain information from the  
2 participating for-profit business entities as may be required in  
3 order to determine the necessary amount of segregated withholding  
4 taxes attributable to new direct jobs or existing payroll.

5       G. The Oklahoma Tax Commission shall determine with respect to  
6 the withholding taxes attributable to the income of employees  
7 engaged in new direct jobs or existing jobs for one or more for-  
8 profit business entities participating in a pooled financing  
9 pursuant to the Oklahoma Community Economic Development Pooled  
10 Finance Act the amount of such withholding taxes required to be  
11 deposited to the credit of the Community Economic Development Pooled  
12 Finance Revolving Fund.

13       H. The Oklahoma Tax Commission shall make a deposit in the  
14 Community Economic Development Pooled Finance Revolving Fund in  
15 accordance with any applicable agreement entered into with one or  
16 more eligible local government entities in conjunction with  
17 participating for-profit business entities participating in a pooled  
18 financing pursuant to the Oklahoma Community Economic Development  
19 Pooled Finance Act.

20       I. No for-profit business entity that participates from  
21 proceeds of obligations issued by the Authority from the Public-  
22 Private Partner Development Pool may receive or continue to receive  
23 incentive payments pursuant to the Economic Development Pool, the  
24 Oklahoma Quality Jobs Program Act or claim any investment tax

1 credits otherwise authorized pursuant to Section 2357.4 of Title 68  
2 of the Oklahoma Statutes during the period of time that any  
3 withholding taxes attributable to the payroll of such entity are  
4 being paid to the Community Economic Development Pooled Finance  
5 Revolving Fund or in any manner used for the payment of principal,  
6 interest or other costs associated with any obligations issued by  
7 the Authority pursuant to the provisions of the act.

8 SECTION 6. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 891.19 of Title 62, unless there  
10 is created a duplication in numbering, reads as follows:

11 For-profit business entities that participate in the Public-  
12 Private Partner Development Pool will not be subject to corporate  
13 income tax associated with the segregation and payment of  
14 withholding taxes to local government entities when such payment is  
15 made for the purpose of infrastructure development in the Public-  
16 Private Partner Development Pool.

17 SECTION 7. This act shall become effective November 1, 2019.  
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