

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 749

By: Rader

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 2011, Section 891.3, as amended by Section 1, Chapter 179, O.S.L. 2013 (62 O.S. Supp. 2018, Section 891.3), which relates to definitions for the Oklahoma Community Economic Development Pooled Finance Act; adding definitions; amending 62 O.S. 2011, Section 891.15, as amended by Section 468, Chapter 304, O.S.L. 2012 (62 O.S. Supp. 2018, Section 891.15), which relates to the Community Economic Development Pooled Finance Revolving Fund; adding revenue source to the credit of the Fund; authorizing stated Authority to act as conduit issuer for benefit of certain entities for certain projects using the Public-Private Partner Development Pool; limiting amount of obligations authorized to be issued; stating purpose of certain Pool; requiring certain percentage of Pool proceeds to benefit certain 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.

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

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

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

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

3. "Business entity" means a corporation, limited liability company, general partnership, limited partnership, or such other entity conducting a lawful activity which is organized pursuant to the laws of the state or which is authorized to do business in the 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
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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

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

3 ~~13.~~ 14. "Infrastructure Pool" means proceeds of obligations
4 sold by the Authority to provide resources for eligible local
5 government entities to provide financing for infrastructure or other
6 purposes authorized by this act;

7 ~~14.~~ 15. "Pooled financing" means an agreement, pursuant to the
8 provisions of this act or pursuant to the Interlocal Cooperation
9 Act, among two or more eligible local governmental entities or
10 involving a local government entity or entities in conjunction with
11 a for-profit business entity to use proceeds from a tax levy or
12 other authorized source of revenue to make payments of principal,
13 interest, and other related costs in connection with an obligation
14 issued by the Oklahoma Development Finance Authority for the benefit
15 of the entities entering into such agreement according to the terms
16 of the agreement and according to the requirements of any ballot
17 submitted to the voters of the respective eligible local
18 governmental entities. Pooled financing does not mean or include
19 the use of any ad valorem tax revenues derived from a levy imposed
20 pursuant to Section 26 of Article X of the Oklahoma Constitution;

21 ~~and~~

22 ~~15.~~ 16. "Private activity bonds" means those obligations the
23 interest income from which may be exempt from federal income tax
24

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
25

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 forms 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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19 57-1-1161 CP 1/17/2019 11:52:44 AM
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