

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 749

By: Rader and Pemberton of the
Senate

6 and

7 Hilbert and Hasenbeck of
8 the House

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10
11 An Act relating to public finance; amending 62 O.S.
12 2011, Section 891.3, as amended by Section 1, Chapter
13 179, O.S.L. 2013 (62 O.S. Supp. 2018, Section 891.3),
14 which relates to definitions for the Oklahoma
15 Community Economic Development Pooled Finance Act;
16 adding definitions; amending 62 O.S. 2011, Section
17 891.15, as amended by Section 468, Chapter 304,
18 O.S.L. 2012 (62 O.S. Supp. 2018, Section 891.15),
19 which relates to the Community Economic Development
20 Pooled Finance Revolving Fund; adding revenue source
21 to the credit of the Fund; authorizing stated
22 Authority to act as conduit issuer for benefit of
23 certain entities for certain projects using the
24 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

1 Authority to provide proceeds in accordance with the
2 scoring system; providing definitions; requiring
3 eligible entity to obtain a determination letter from
4 certain entity for specified purposes; requiring
5 entity to use certain analysis and information for
6 determination letter; authorizing use of information
7 for certain purposes; authorizing local government to
8 capture certain taxes under certain circumstances;
9 requiring transmission of letter to certain entities;
10 prohibiting certain use of captured taxes; stating
11 exception for specific use of captured tax; requiring
12 certain agreements between entities under certain
13 circumstances; authorizing Authority to approve
14 amount and duration of segregation of certain taxes
15 for certain purposes; authorizing Authority to obtain
16 certain information for certain purposes; requiring
17 Oklahoma Tax Commission to make determination of
18 deposit amounts of taxes credited to certain fund;
19 requiring Oklahoma Tax Commission to make certain
20 deposit in accordance with applicable agreements;
21 prohibiting certain entities from receiving certain
22 monies or tax credits under certain circumstances;
23 exempting certain entities from certain tax under
24 certain circumstances; providing for codification;
and providing an effective date.

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;

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

6 4. "Community Economic Development Pooled Finance Revolving
7 Fund" means the fund created pursuant to Section 891.15 of this
8 title;

9 5. "Conduit issuer" means the Oklahoma Development Finance
10 Authority acting for the benefit of either a combination of local
11 government entities or a local government entity or entities in
12 conjunction with a for-profit business entity pursuant to the
13 provisions of this act;

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

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

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

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

24 10. "Eligible local government entity" means:

- 1 a. a city,
- 2 b. a town,
- 3 c. a county,
- 4 d. any combination of cities, towns, or counties, or
- 5 e. a public trust with a beneficiary or beneficiary which
- 6 is a city, town, county or some combination of such
- 7 entities as authorized by Section 176 of Title 60 of
- 8 the Oklahoma Statutes;

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

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

17 ~~12.~~ 13. "Infrastructure" means:

- 18 a. county roads,
- 19 b. county bridges,
- 20 c. municipal streets,
- 21 d. municipal bridges,
- 22 e. any railway or utility system owned by an eligible
- 23 local government entity,
- 24 f. water treatment facilities,

- 1 g. solid waste management facilities,
- 2 h. water treatment and distribution systems, or
- 3 i. any asset or project identified by the eligible local
- 4 government entities necessary for essential government
- 5 functions if the asset is owned by a local government
- 6 entity or entities;

7 ~~13.~~ 14. "Infrastructure Pool" means proceeds of obligations
8 sold by the Authority to provide resources for eligible local
9 government entities to provide financing for infrastructure or other
10 purposes authorized by this act;

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

3 ~~15.~~ 16. "Private activity bonds" means those obligations the
4 interest income from which may be exempt from federal income tax
5 pursuant to the provisions of the Internal Revenue Code of 1986, as
6 amended; and

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

13 SECTION 2. AMENDATORY 62 O.S. 2011, Section 891.15, as
14 amended by Section 468, Chapter 304, O.S.L. 2012 (62 O.S. Supp.
15 2018, Section 891.15), is amended to read as follows:

16 Section 891.15. There is hereby created in the State Treasury a
17 revolving fund for the Oklahoma Development Finance Authority to be
18 designated the "Community Economic Development Pooled Finance
19 Revolving Fund". The fund shall be a continuing fund, not subject
20 to fiscal year limitations, and shall consist of all monies received
21 by the Oklahoma Development Finance Authority from revenues derived
22 from levies imposed by counties, cities, towns or combinations of
23 such local governmental entities as provided by this act in addition
24 to any withholding tax revenues as provided by Section 891.12 of

1 this title or Section 5 of this act. All monies accruing to the
2 credit of said fund are hereby appropriated and may be budgeted and
3 expended by the Oklahoma Development Finance Authority for the
4 purpose of paying principal, interest and other costs of borrowing
5 by the Authority as authorized by this act. Expenditures from said
6 fund shall be made upon warrants issued by the State Treasurer
7 against claims filed as prescribed by law with the Director of the
8 Office of Management and Enterprise Services for approval and
9 payment.

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

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

19 B. The Authority shall be authorized to issue obligations in
20 order to provide net proceeds on a pooled basis not to exceed the
21 combined Economic Development Pool and Infrastructure Development
22 Pool amount authorized by Sections 891.7 and 891.8 of this title.
23 The Authority shall be authorized to issue obligations within the
24

1 limit prescribed by this subsection based upon the defeasance of
2 previously issued obligations.

3 C. The proceeds from the Public-Private Partner Development
4 Pool shall be for the purpose of providing financing for an eligible
5 local government entity for an authorized infrastructure project
6 located in this state that will benefit one or more business
7 entities located in this state.

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

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

18 F. Obligations issued pursuant to the provisions of this
19 section may be issued on a tax-exempt basis if the applicable
20 provisions of federal law governing private activity bonds allow
21 such issuance. In the event federal law does not allow issuance of
22 obligations on a tax-exempt basis, such obligations shall be issued
23 on a taxable basis.

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

4 A. The Oklahoma Department of Commerce shall promulgate rules
5 for purposes of establishing criteria for the funding of authorized
6 infrastructure projects from the proceeds of obligations issued by
7 the Oklahoma Development Finance Authority for the Public-Private
8 Partner Development Pool.

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

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

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

16 2. Additional capital investment by one or more local
17 government entities;

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

21 4. Salary and wage payments to persons employed in new direct
22 jobs; and

23 5. The likelihood of additional business location decisions
24 resulting from the activity of the for-profit business entity or

1 entities that would benefit from use of the Public-Private Partner
2 Development Pool.

3 D. One or more eligible local government entities shall apply
4 to the Department for approval of a pooled financing for an
5 infrastructure project on such forms as the Department may
6 prescribe.

7 E. The Department shall compile and maintain a prioritized list
8 of infrastructure projects eligible for pooled financing through the
9 Authority.

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

14 G. The Authority shall, within the limit on available bond
15 proceeds in the Development Infrastructure Pool, provide proceeds in
16 accordance with the scoring system established by the Department
17 pursuant to this section.

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

21 A. As used in this section:

22 1. "Estimated direct state benefits" means the tax revenues
23 projected by the Oklahoma Department of Commerce to accrue to the
24 state as a result of new direct jobs and capital spending associated

1 with one or more for-profit business entities, federal government
2 defense entities and infrastructure development by one or more local
3 government entities;

4 2. "Estimated indirect state benefits" means the indirect new
5 tax revenues projected by the Department to accrue to the state
6 including, but not limit to, revenue generated from ancillary
7 support jobs directly related to the new direct jobs, capital
8 spending and infrastructure spending;

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

- 12 a. the costs of education for new state resident
13 children,
- 14 b. the costs of public health, public safety and
15 transportation services to be provided to new state
16 residents,
- 17 c. the costs of other state services to be provided to
18 new state residents, and
- 19 d. the costs of other state services; and

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

1 B. An eligible local government entity in partnership with one
2 or more for-profit business entities and/or federal government
3 defense entities that would otherwise qualify to receive or benefit
4 from proceeds from the issuance of obligations by the Authority from
5 the Public-Private Partner Development Pool shall be required to
6 obtain a determination letter from the Department that the
7 infrastructure development will result in a positive net benefit
8 rate, to be computed by the Department using a methodology which
9 provides for the analysis of estimated direct state benefits,
10 estimated indirect state benefits, estimated direct state costs and
11 estimated indirect state costs. The Department shall use such
12 information as it determines to be relevant for the analysis
13 required by this subsection including, but not limited to, the type
14 of infrastructure development, the business activities in which the
15 participating for-profit business entities are engaged or will be
16 engaged, the amount of capital investment, type of assets acquired
17 or utilized by the participating business entities, economic effect
18 of the business activity within the relevant geographic region and
19 any other factors as the Department deems relevant. The Department
20 may use information regarding the infrastructure development alone
21 or in conjunction with relevant information regarding other business
22 activity in a geographically relevant area surrounding the
23 infrastructure development or the location of the participating for-
24 profit business entities in order to perform the computation of the

1 net benefit rate. If the result of the analysis is a positive net
2 benefit rate, the applying local government entity shall be allowed
3 to capture withholding taxes associated with new jobs or with
4 existing jobs associated with the participating for-profit business
5 entities as otherwise provided by this act. The Department shall
6 transmit a determination letter to the authorized representative of
7 the local government entity and shall also transmit a copy of the
8 determination letter to the Oklahoma Tax Commission and to the
9 Oklahoma Development Finance Authority notwithstanding the positive
10 or negative result of the net benefit rate. The Authority shall not
11 allow a local government entity to use captured withholding tax
12 revenues for purposes of any pooled financing otherwise authorized
13 by this act unless the Department has previously transmitted a
14 determination letter that reveals a positive net benefit rate for
15 the Public-Private Partner Development Pool project.

16 C. Any for-profit business entity that participates in the
17 Public-Private Partner Development Pool may be required by the
18 applicable local government entity to enter into such agreements as
19 may be required between the entity, the local government entity, the
20 Authority and the Oklahoma Tax Commission to provide for the
21 segregation of withholding taxes.

22 D. The amount of withholding taxes subject to the provisions of
23 this section shall, together with other revenue sources or
24 commitments and undertakings by the for-profit business entity or

1 third parties, be sufficient to make payment of any required
2 principal, interest, adequate reserves or other authorized costs for
3 borrowing by the Authority.

4 E. The Authority shall have the power of approval regarding the
5 amount and duration of withholding tax segregation pursuant to the
6 provisions of this section in order to ensure payment of its
7 obligations and to promote the marketability of such obligations.

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

12 G. The Oklahoma Tax Commission shall determine with respect to
13 the withholding taxes attributable to the income of employees
14 engaged in new direct jobs or existing jobs for one or more for-
15 profit business entities participating in a pooled financing
16 pursuant to the Oklahoma Community Economic Development Pooled
17 Finance Act the amount of such withholding taxes required to be
18 deposited to the credit of the Community Economic Development Pooled
19 Finance Revolving Fund.

20 H. The Oklahoma Tax Commission shall make a deposit in the
21 Community Economic Development Pooled Finance Revolving Fund in
22 accordance with any applicable agreement entered into with one or
23 more eligible local government entities in conjunction with
24 participating for-profit business entities participating in a pooled

1 financing pursuant to the Oklahoma Community Economic Development
2 Pooled Finance Act.

3 I. No for-profit business entity that participates from
4 proceeds of obligations issued by the Authority from the Public-
5 Private Partner Development Pool may receive or continue to receive
6 incentive payments pursuant to the Economic Development Pool, the
7 Oklahoma Quality Jobs Program Act or claim any investment tax
8 credits otherwise authorized pursuant to Section 2357.4 of Title 68
9 of the Oklahoma Statutes during the period of time that any
10 withholding taxes attributable to the payroll of such entity are
11 being paid to the Community Economic Development Pooled Finance
12 Revolving Fund or in any manner used for the payment of principal,
13 interest or other costs associated with any obligations issued by
14 the Authority pursuant to the provisions of the act.

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

18 For-profit business entities that participate in the Public-
19 Private Partner Development Pool will not be subject to corporate
20 income tax associated with the segregation and payment of
21 withholding taxes to local government entities when such payment is
22 made for the purpose of infrastructure development in the Public-
23 Private Partner Development Pool.

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
03/28/2019 - DO PASS.