

# An Act

ENROLLED SENATE  
BILL NO. 749

By: Rader and Pemberton of the  
Senate

and

Hilbert, Hasenbeck and Hill  
of the House

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; requiring transmission of letter to certain entities; prohibiting certain use of captured taxes; stating exception for specific use of captured tax; requiring certain agreements between entities under certain circumstances; authorizing Authority to approve amount and duration of segregation of certain taxes for certain purposes; authorizing Authority to obtain certain information for certain purposes; requiring Oklahoma Tax Commission to make determination of deposit amounts of taxes credited to certain fund; requiring Oklahoma Tax Commission to make certain deposit in accordance with applicable agreements; prohibiting certain entities from receiving certain monies or tax credits under certain circumstances; exempting certain entities from certain tax under certain circumstances; providing for codification; and providing an effective date.

SUBJECT: Public finance

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;

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

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

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

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

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

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

10. "Eligible local government entity" means:

- a. a city,
- b. a town,
- c. a county,
- d. any combination of cities, towns, or counties, or
- e. a public trust with a beneficiary or beneficiary which is a city, town, county or some combination of such

entities as authorized by Section 176 of Title 60 of the Oklahoma Statutes;

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

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

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

- a. county roads,
- b. county bridges,
- c. municipal streets,
- d. municipal bridges,
- e. any railway or utility system owned by an eligible local government entity,
- f. water treatment facilities,
- g. solid waste management facilities,
- h. water treatment and distribution systems, or
- i. any asset or project identified by the eligible local 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 pursuant to the provisions of the Internal Revenue Code of 1986, as amended; and

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

SECTION 2. AMENDATORY 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), is amended to read as follows:

Section 891.15. There is hereby created in the State Treasury a revolving fund for the Oklahoma Development Finance Authority to be designated the "Community Economic Development Pooled Finance Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Oklahoma Development Finance Authority from revenues derived from levies imposed by counties, cities, towns or combinations of such local governmental entities as provided by this act in addition to any withholding tax revenues as provided by Section 891.12 of this title or Section 5 of this act. All monies accruing to the

credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Development Finance Authority for the purpose of paying principal, interest and other costs of borrowing by the Authority as authorized by this act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. As used in this section:

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

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



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

- a. the costs of education for new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services; and

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

B. An eligible local government entity in partnership with one or more for-profit business entities and/or federal government defense entities that would otherwise qualify to receive or benefit from proceeds from the issuance of obligations by the Authority from the Public-Private Partner Development Pool shall be required to obtain a determination letter from the Department that the infrastructure development will result in a positive net benefit rate, to be computed by the Department using a methodology which provides for the analysis of estimated direct state benefits, estimated indirect state benefits, estimated direct state costs and estimated indirect state costs. The Department shall use such information as it determines to be relevant for the analysis required by this subsection including, but not limited to, the type of infrastructure development, the business activities in which the participating for-profit business entities are engaged or will be engaged, the amount of capital investment, type of assets acquired or utilized by the participating business entities, economic effect of the business activity within the relevant geographic region and any other factors as the Department deems relevant. The Department

may use information regarding the infrastructure development alone or in conjunction with relevant information regarding other business activity in a geographically relevant area surrounding the infrastructure development or the location of the participating for-profit business entities in order to perform the computation of the net benefit rate. If the result of the analysis is a positive net benefit rate, the applying local government entity shall be allowed to capture withholding taxes associated with new jobs or with existing jobs associated with the participating for-profit business entities as otherwise provided by this act. The Department shall transmit a determination letter to the authorized representative of the local government entity and shall also transmit a copy of the determination letter to the Oklahoma Tax Commission and to the Oklahoma Development Finance Authority notwithstanding the positive or negative result of the net benefit rate. The Authority shall not allow a local government entity to use captured withholding tax revenues for purposes of any pooled financing otherwise authorized by this act unless the Department has previously transmitted a determination letter that reveals a positive net benefit rate for the Public-Private Partner Development Pool project.

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

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

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

F. The Authority shall obtain information from the participating for-profit business entities as may be required in

order to determine the necessary amount of segregated withholding taxes attributable to new direct jobs or existing payroll.

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

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

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

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

For-profit business entities that participate in the Public-Private Partner Development Pool will not be subject to corporate income tax associated with the segregation and payment of withholding taxes to local government entities when such payment is

made for the purpose of infrastructure development in the Public-Private Partner Development Pool.

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

Passed the Senate the 12th day of March, 2019.

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Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2019.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_