

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1726
102ND GENERAL ASSEMBLY

3882H.04C

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Section A. Section 108.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 108.170, to read as follows: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 **or at a rate that is up to two hundred fifty basis points above the longest maturity United States Treasury bond, whichever is greater**~~[-];~~ and may be sold, at any sale, at ~~[the best price obtainable,]~~ **a competitive market yield as evidenced by a signed statement or memorandum from the underwriter, bond purchaser, or the issuer's municipal advisor, at a price** 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

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.

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

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

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

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

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

52 2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the
53 sale of bonds, notes, or other evidence of indebtedness issued by the state board of public
54 buildings created under section 8.010, the state board of fund commissioners created under
55 section 33.300, any port authority created under section 68.010, the bi-state metropolitan

56 development district authorized under section 70.370, any special business district created
57 under section 71.790, any county, as defined in section 108.465, exercising the powers
58 granted by sections 108.450 to 108.470, the ~~[industrial development]~~ **Missouri development**
59 **finance** board created under section 100.265, any planned industrial expansion authority
60 created under section 100.320, the higher education loan authority created under section
61 173.360, the Missouri housing development commission created under section 215.020, the
62 state environmental improvement and energy resources authority created under section
63 260.010, the agricultural and small business development authority created under section
64 348.020, any industrial development corporation created under section 349.035, or the health
65 and educational facilities authority created under section 360.020 shall, with respect to the
66 sales price, manner of sale and interest rate, be governed by the specific sections applicable to
67 each of these entities.

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

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

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

75 (a) Is a certified public accountant; or

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

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

84 4. Notwithstanding other provisions of this section or other law, the sale of bonds,
85 notes, or other evidence of indebtedness issued by any housing authority created under
86 section 99.040 may be sold at any sale, at the ~~[best price]~~ **lowest true interest cost**
87 obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value thereof, and may bear
88 interest at a rate not exceeding fourteen percent per annum **or at a rate that is up to two**
89 **hundred fifty basis points above the longest maturity United States Treasury bond,**
90 **whichever is greater.** The sale shall be a public sale unless the issuing jurisdiction adopts a
91 resolution setting forth clear justification why the sale should be a private sale except that
92 private activity bonds may be sold either at public or private sale.

93 5. Notwithstanding other provisions of this section or law, industrial development
94 revenue bonds may be sold at private sale and bear interest at a rate not exceeding fourteen
95 percent per annum **or at a rate that is up to two hundred fifty basis points above the**
96 **longest maturity United States Treasury bond, whichever is greater,** at the ~~[best price]~~
97 **lowest true interest cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value
98 thereof.

99 6. Notwithstanding other provisions in subsection 1 of this section to the contrary,
100 revenue bonds issued for airport purposes by any constitutional charter city in this state which
101 now has or may hereafter acquire a population of more than three hundred thousand but less
102 than six hundred thousand inhabitants, according to the last federal decennial census, may
103 bear interest at a rate not exceeding fourteen percent per annum **or at a rate that is up to two**
104 **hundred fifty basis points above the longest maturity United States Treasury bond,**
105 **whichever is greater,** if sold at public sale after giving reasonable notice, at the ~~[best price]~~
106 **lowest true interest cost** obtainable, not less than ~~[ninety-five]~~ **fifty** percent of the par value
107 thereof.

108 7. For purposes of the interest rate limitations set forth in this section, the interest rate
109 on bonds, notes or other evidence of indebtedness described in this section means the rate at
110 which the present value of the debt service payments on an issue of bonds, notes or other
111 evidence of indebtedness, discounted to the date of issuance, equals the original price at
112 which such bonds, notes or other evidence of indebtedness are sold by the issuer. Interest on
113 bonds, notes or other evidence of indebtedness may be paid periodically at such times as shall
114 be determined by the governing body of the issuer and may be compounded in accordance
115 with section 408.080.

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

117 (1) Any entity referenced in subsection 1 or 2 of this section and any other political
118 corporation of the state which entity or political corporation has an annual operating budget
119 for the current year exceeding twenty-five million dollars may, in connection with managing
120 the cost to such entity or political corporation of purchasing fuel, electricity, natural gas, and
121 other commodities used in the ordinary course of its lawful operations, enter into agreements
122 providing for fixing the cost of such commodity, including without limitation agreements
123 commonly referred to as hedges, futures, and options; provided that as of the date of such
124 agreement, such entity or political corporation shall have complied with subdivision (3) of
125 this subsection; and further provided that no eligible school **entity**, as defined in section
126 393.310, shall be authorized by this subsection to enter into such agreements in connection
127 with the purchase of natural gas while the tariffs required under section 393.310 are in effect;

128 (2) Any entity referenced in subsection 1 or 2 of this section and any other political
129 corporation of the state may, in connection with its bonds, notes, or other obligations then

130 outstanding or to be issued and bearing interest at a fixed or variable rate, enter into
131 agreements providing for payments based on levels of or changes in interest rates, including
132 without limitation certain derivative agreements commonly referred to as interest rate swaps,
133 hedges, caps, floors, and collars, provided that:

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

137 (b) As of the date of such agreement, such entity's or political corporation's bonds,
138 notes, or other obligations then outstanding or to be issued have received a stand-alone credit
139 rating in one of the [~~two highest categories, without regard to any gradation within such~~
140 ~~categories, from at least one]~~ **four highest long-term ratings or the highest short-term**
141 **rating issued by a** nationally recognized credit rating agency, or such entity or political
142 corporation has an issuer or general credit rating, in one of the [~~two highest categories,~~
143 ~~without regard to any gradation within such categories, from at least one]~~ **four highest long-**
144 **term ratings or the highest short-term rating issued by a** nationally recognized credit
145 rating agency; and

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

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

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

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

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