

FIRST REGULAR SESSION

SENATE BILL NO. 332

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

0401S.01H

KRISTINA MARTIN, Secretary

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Section A. Section 108.170, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 108.170,
3 to read as follows:

108.170. 1. Notwithstanding any other provisions of
2 any law or charter to the contrary, any issue of bonds,
3 notes, or other evidences of indebtedness, including bonds,
4 notes, or other evidences of indebtedness payable solely
5 from revenues derived from any revenue-producing facility,
6 hereafter issued under any law of this state by any county,
7 city, town, village, school district, educational
8 institution, drainage district, levee district, nursing home
9 district, hospital district, library district, road
10 district, fire protection district, water supply district,
11 sewer district, housing authority, land clearance for
12 redevelopment authority, special authority created under
13 section 64.920, authority created pursuant to the provisions
14 of chapter 238, or other municipality, political
15 subdivision, or district of this state shall be
16 negotiable[,]; may be issued in [bearer] **book-entry** form or
17 registered form with or without coupons to evidence interest
18 payable thereon[,]; may be issued in any denomination[,
19 and]; may bear interest at a rate not exceeding ten percent

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 per annum or at a rate that is up to two hundred fifty basis
21 points above the longest maturity United States Treasury
22 bond, whichever is greater[,]; and may be sold, at any sale,
23 at [the best price obtainable,] a competitive market yield
24 as evidenced by a signed statement or memorandum from the
25 underwriter, bond purchaser, or the issuer's municipal
26 advisor, at a price not less than [ninety-five] fifty
27 percent of the par value thereof, anything in any
28 proceedings heretofore had authorizing such bonds, notes, or
29 other evidence of indebtedness, or in any law of this state
30 or charter provision to the contrary notwithstanding. Such
31 issue of bonds, notes, or other evidence of indebtedness may
32 bear interest at a rate not exceeding fourteen percent per
33 annum or at a rate that is up to two hundred fifty basis
34 points above the longest maturity United States Treasury
35 bond, whichever is greater, if sold at public sale after
36 giving reasonable notice of such sale, at the [best price
37 obtainable,] lowest true interest cost bid received, at a
38 price not less than [ninety-five] fifty percent of the par
39 value thereof; provided[,], that such bonds, notes, or other
40 evidence of indebtedness may be sold to any agency or
41 corporate or other instrumentality of the state of Missouri
42 or of the federal government at private sale at a rate not
43 exceeding fourteen percent per annum or at a rate that is up
44 to two hundred fifty basis points above the longest maturity
45 United States Treasury bond, whichever is greater. If a
46 political subdivision has an unenhanced bond rating [of AA+
47 or higher, or comparable rating,] that is one of the two
48 highest long-term ratings or the highest short-term rating
49 issued by a nationally recognized rating agency on its
50 outstanding general obligation bonds or is proposing to
51 issue general obligation bonds with an unenhanced bond

52 rating [of AA+ or higher, or comparable rating] **that is one**
53 **of the two highest long-term ratings or the highest short-**
54 **term rating issued by a nationally recognized rating agency,**
55 the new issue of general obligation bonds shall be issued
56 through a competitive process unless the political
57 subdivision employs the services of a municipal advisor, in
58 which case the political subdivision may use a negotiated or
59 competitive process, except that such requirements shall not
60 apply to any general obligation bonds:

61 (1) Sold, pursuant to written agreement, to the
62 government of the United States of America or of the state
63 of Missouri or to any bureau, department, body corporate,
64 instrumentality, or agency of the United [State] **States** of
65 America or the state of Missouri;

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

69 (3) That are issued or are part of an issue issued to
70 refinance a prior issue of general obligation indebtedness
71 or which are issued contemporaneously with any such issue of
72 refunding bonds; provided, the refunding bonds shall not
73 exceed the principal of the outstanding indebtedness to be
74 refunded and the accrued interest to the date of such
75 refunding bonds.

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

79 2. Notwithstanding the provisions of subsection 1 of
80 this section to the contrary, the sale of bonds, notes, or
81 other evidence of indebtedness issued by the state board of
82 public buildings created under section 8.010, the state

83 board of fund commissioners created under section 33.300,
84 any port authority created under section 68.010, the bi-
85 state metropolitan development district authorized under
86 section 70.370, any special business district created under
87 section 71.790, any county, as defined in section 108.465,
88 exercising the powers granted by sections 108.450 to
89 108.470, the **[industrial development] Missouri development**
90 **finance** board created under section 100.265, any planned
91 industrial expansion authority created under section
92 100.320, the higher education loan authority created under
93 section 173.360, the Missouri housing development commission
94 created under section 215.020, the state environmental
95 improvement and energy resources authority created under
96 section 260.010, the agricultural and small business
97 development authority created under section 348.020, any
98 industrial development corporation created under section
99 349.035, or the health and educational facilities authority
100 created under section 360.020 shall, with respect to the
101 sales price, manner of sale and interest rate, be governed
102 by the specific sections applicable to each of these
103 entities.

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

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

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

114 (a) Is a certified public accountant; or

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

119 For the purposes of this subsection, "independent" shall
120 have the same meaning as defined by the rules of the United
121 States Securities and Exchange Commission. In determining
122 the individuals or entities that may serve as a municipal
123 advisor, nothing in this section shall be construed to be
124 more restrictive than the definition of a municipal advisor
125 as established by the United States Securities and Exchange
126 Commission.

127 4. Notwithstanding other provisions of this section or
128 other law, the sale of bonds, notes, or other evidence of
129 indebtedness issued by any housing authority created under
130 section 99.040 may be sold at any sale, at the **[best price]**
131 **lowest true interest cost** obtainable, not less than **[ninety-**
132 **five] fifty** percent of the par value thereof, and may bear
133 interest at a rate not exceeding fourteen percent per annum
134 **or at a rate that is up to two hundred fifty basis points**
135 **above the longest maturity United States Treasury bond,**
136 **whichever is greater.** The sale shall be a public sale
137 unless the issuing jurisdiction adopts a resolution setting
138 forth clear justification why the sale should be a private
139 sale except that private activity bonds may be sold either
140 at public or private sale.

141 5. Notwithstanding other provisions of this section or
142 law, industrial development revenue bonds may be sold at
143 private sale and bear interest at a rate not exceeding
144 fourteen percent per annum **or at a rate that is up to two**
145 **hundred fifty basis points above the longest maturity United**

146 **States Treasury bond, whichever is greater,** at the [best
147 price] **lowest true interest cost** obtainable, not less than
148 [ninety-five] **fifty** percent of the par value thereof.

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

162 7. For purposes of the interest rate limitations set
163 forth in this section, the interest rate on bonds, notes or
164 other evidence of indebtedness described in this section
165 means the rate at which the present value of the debt
166 service payments on an issue of bonds, notes or other
167 evidence of indebtedness, discounted to the date of
168 issuance, equals the original price at which such bonds,
169 notes or other evidence of indebtedness are sold by the
170 issuer. Interest on bonds, notes or other evidence of
171 indebtedness may be paid periodically at such times as shall
172 be determined by the governing body of the issuer and may be
173 compounded in accordance with section 408.080.

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

176 (1) Any entity referenced in subsection 1 or 2 of this
177 section and any other political corporation of the state

178 which entity or political corporation has an annual
179 operating budget for the current year exceeding twenty-five
180 million dollars may, in connection with managing the cost to
181 such entity or political corporation of purchasing fuel,
182 electricity, natural gas, and other commodities used in the
183 ordinary course of its lawful operations, enter into
184 agreements providing for fixing the cost of such commodity,
185 including without limitation agreements commonly referred to
186 as hedges, futures, and options; provided that as of the
187 date of such agreement, such entity or political corporation
188 shall have complied with subdivision (3) of this subsection;
189 and further provided that no eligible school **entity**, as
190 defined in section 393.310, shall be authorized by this
191 subsection to enter into such agreements in connection with
192 the purchase of natural gas while the tariffs required under
193 section 393.310 are in effect;

194 (2) Any entity referenced in subsection 1 or 2 of this
195 section and any other political corporation of the state
196 may, in connection with its bonds, notes, or other
197 obligations then outstanding or to be issued and bearing
198 interest at a fixed or variable rate, enter into agreements
199 providing for payments based on levels of or changes in
200 interest rates, including without limitation certain
201 derivative agreements commonly referred to as interest rate
202 swaps, hedges, caps, floors, and collars, provided that:

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

208 (b) As of the date of such agreement, such entity's or
209 political corporation's bonds, notes, or other obligations

210 then outstanding or to be issued have received a stand-alone
211 credit rating in one of the [two highest categories, without
212 regard to any gradation within such categories, from at
213 least one] **four highest long-term ratings or the highest**
214 **short-term rating issued by a** nationally recognized credit
215 rating agency, or such entity or political corporation has
216 an issuer or general credit rating, in one of the [two
217 highest categories, without regard to any gradation within
218 such categories, from at least one] **four highest long-term**
219 **ratings or the highest short-term rating issued by a**
220 nationally recognized credit rating agency; and

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

224 (3) Prior to entering into any agreements pursuant to
225 subdivision (1) or (2) of this subsection, the governing
226 body of the entity or political corporations entering into
227 such agreements shall have adopted a written policy
228 governing such agreements. Such policy shall be prepared by
229 integrating the recommended practices published by the
230 Government Finance Officers Association or comparable
231 nationally recognized professional organization and shall
232 provide guidance with respect to the permitted purposes,
233 authorization process, mitigation of risk factors, ongoing
234 oversight responsibilities, market disclosure, financial
235 strategy, and any other factors in connection with such
236 agreements determined to be relevant by the governing body
237 of such entity or political corporation. Such entity or
238 political corporation may enter into such agreements at such
239 times and such agreements may contain such payment,
240 security, default, remedy, and other terms and conditions as
241 shall be consistent with the written policy adopted under

242 this subdivision and as may be approved by the governing
243 body of such entity or other obligated party, including any
244 rating by any nationally recognized rating agency and any
245 other criteria as may be appropriate;

246 (4) Nothing in this subsection shall be applied or
247 interpreted to authorize any such entity or political
248 corporation to enter into any such agreement for investment
249 purposes or to diminish or alter the special or general
250 power any such entity or political corporation may otherwise
251 have under any other provisions of law including the special
252 or general power of any interstate transportation authority.

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

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