

ENGROSSED HOUSE
BILL NO. 1673

BY: McCORKELL and CROCKER of
the HOUSE

and

FISHER and WILLIAMS
(Penny) of the SENATE

AN ACT RELATING TO ECONOMIC DEVELOPMENT; CREATING THE
STATE TAX INCENTIVE REDEMPTION AND INVESTMENT
PROGRAM ACT; PROVIDING SHORT TITLE; IMPOSING
CERTAIN DUTIES ON THE OKLAHOMA CAPITAL INVESTMENT
BOARD; AUTHORIZING AN INDENTURE AMENDMENT; STATING
MISSION; DEFINING TERMS; AUTHORIZING THE OFFER AND
TRANSFER OF CERTAIN TAX CREDITS; MAKING TAX CREDITS
FREELY TRANSFERRABLE; PROVIDING POWERS AND DUTIES
OF THE OKLAHOMA CAPITAL INVESTMENT BOARD; PROVIDING
FOR THE APPLICABILITY OF OTHER LAWS; EXEMPTING
CERTAIN ENTITIES AND TAX CREDITS FROM SECURITIES
PROVISIONS; CREATING A REVOLVING FUND; PROVIDING
FOR DEPOSITS TO AND EXPENDITURES FROM SAID FUND;
PROVIDING RULE OF CONSTRUCTION; MAKING PROVISIONS
CUMULATIVE; PROVIDING FOR CODIFICATION; PROVIDING
FOR AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 5085.13 of Title 74, unless
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "State Tax Incentive Redemption and Investment Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.14 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Capitol Investment Board shall implement the provisions of this act. The Oklahoma Capital Investment Board may amend its indenture to encompass the provisions of this act, and, upon certification by the Governor, shall, in addition to powers granted to it under any other statute, exercise all the powers as provided by this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.15 of Title 74, unless there is created a duplication in numbering, reads as follows:

The mission of the Oklahoma Capital Investment Board under the provisions of this act shall be to mobilize equity capital and near-equity capital for direct investment in single large scale fiscally sound projects that hold the promise of significant economic development impact in Oklahoma.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.16 of Title 74, unless there is created a duplication in numbering, reads as follows

For purposes of this act:

1. "Board" means the Oklahoma Capital Investment Board;
2. "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, and any other securities or rights that evidence ownership in private businesses;
3. "Near-equity capital" means capital invested in unsecured, undersecured, subordinated or convertible loans or debt securities;

4. "Persons" means individuals, corporations, partnerships or other lawfully organized entities;

5. "Put option" means a right or privilege to sell an amount of a particular security or class of securities during a time period ending on the expiration date of the option; and

6. "Tax credits" means any tax credits earned by a project qualified pursuant to the provisions of paragraph 7 of Section 6 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.17 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any project that has or will earn more than Thirty Million Dollars (\$30,000,000.00) in Oklahoma tax credits may offer and, upon acceptance by the Board, transfer the tax credits in whole or in part to the Board in exchange for an investment of capital raised by, through or in conjunction with the Board. The Board may accept, reject, negotiate, transfer, assign or otherwise respond or refuse to respond to the offer.

B. The tax credits shall be freely transferrable to subsequent transferees and may be used as a credit against any ordinary Oklahoma state tax liability irrespective of the type of credit originally earned.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.18 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Capital Investment Board shall have the following powers and duties:

1. To determine the amount of individual tax credits to be transferred pursuant to this act and to negotiate for the sale of such credits subject only to the limits imposed by this act. The Board shall clearly indicate upon the face of the certificate or other document transferring the tax credit the principal amount of

the tax credit and the taxable year or years for which the credit may be claimed;

2. To develop, in conjunction with the Oklahoma Tax Commission, a system for registration of any tax credits redeemed or transferred pursuant to this act and a system of certificates that permits verification that any tax credit claimed upon a tax return is validly issued, properly taken in the year of claim and that any transfers to the tax credit are made in accordance with the requirements of this act;

3. To pay a fee in connection with the purchase by the Board of an option, contract, or other agreement pursuant to which a transfer of tax credits addressed by this act may be made;

4. To make any contract, execute any document, charge fees for services rendered, perform any act or enter into any financial or other transaction necessary in order to carry out its mission as mobilizer of equity and near-equity capital as provided in Section 3 of this act;

5. To employ such persons as may be required for the proper implementation of this act, the management of its assets, or the performance of any function authorized or required by this act or necessary for the accomplishment of any such function;

6. To solicit or receive proposals from qualified projects for the redemption of Oklahoma tax credits and a subsequent investment of capital by, through or in conjunction with the Board. The Board may accept, reject, negotiate, transfer, assign or otherwise respond or refuse to respond to the proposals;

7. To establish criteria for selection of projects in which to invest or cause investment deemed to be large scale fiscally sound projects that hold the promise of significant economic development impact in Oklahoma. Such criteria shall include the project's or its predecessor's quality of management, level of management experience and profit and performance history, the fairness of the

investment terms in relationship to other investors and project risks, soundness of the business plan and other such investment criteria as may be commonly used in the professional investment community as the Board may deem appropriate. Such criteria shall also include the level and probability of the economic development impact in Oklahoma;

8. To extend a guarantee in the form of a put option, guarantee contract or any other such method as selected by the Board. Tax credits may be sold to meet guarantee obligations. Guarantees may extend to principal plus interest over the term of the guarantee at a rate set by a resolution of the Board from time to time. Guarantees in whatever form negotiated by the Board may be made for any period of time;

9. To charge a fee or fees for costs and the fair compensation of risk associated with guarantees extended by the Board. The guarantees extended by the Board shall in no way be an obligation of the state and may be restricted to specific funds or assets of the Board;

10. To issue bonds or other debt instruments backed by its own guarantee provided that no security interest shall be created in the tax credits. A pledge to enforce or the assignment of a contract to purchase tax credits shall not be deemed to create a security interest in the tax credits;

11. To directly invest any portion of its assets including, but not limited to, those derived through the issuance of bonds or other debt instruments guaranteed by the Board or state funds granted to the Board in any single qualified project or projects. If the Board purchases any security the Board shall acquire such securities and may invest, manage, transfer or dispose of such securities in accordance with policies for management of assets adopted by the Board;

12. Notwithstanding other provisions of law, to expend funds or to designate an entity to expend funds to administer and operate the programs of the Board initiated pursuant to the provisions of this act; and

13. To report annually to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the respective chairpersons of the House and Senate Economic Development Committees regarding transactions made under the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.19 of Title 74, unless there is created a duplication in numbering, reads as follows:

Meetings of the Oklahoma Capital Investment Board pursuant to the provisions of this act shall be subject to the Oklahoma Open Meeting Act and, except as otherwise provided in this section, the records of the Board shall be subject to the Oklahoma Open Records Act. Any information submitted to or compiled by the Board with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity that provided such information or that is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the Board.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.20 of Title 74, unless there is created a duplication in numbering, reads as follows:

For purposes of implementing the provisions of this act, neither the Board nor its trustees, officers, directors or employees shall be considered to be broker-dealers, agents, investment advisors or investment advisor representatives under Title 71 of the Oklahoma

Statutes. The tax credits redeemed, sold or transferred pursuant to this act shall not be considered to be securities under Title 71 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.21 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Commerce to be designated the "OCIB STIRIP Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of appropriated or granted funds. All monies accruing to the credit of said fund are hereby appropriated and, as authorized by the Oklahoma Capital Investment Board, shall be expended by the Oklahoma Department of Commerce to perform the duties imposed upon the Board by this act. Expenditures of appropriated funds from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.22 of Title 74, unless there is created a duplication in numbering, reads as follows:

Nothing contained in this act shall be construed as a restriction or limitation upon any powers which the Board might otherwise have under any other law of this state previously or hereafter enacted and the provisions of this act are cumulative to such powers. The provisions of this act shall be construed to provide a complete, additional and alternative method for the doing of things authorized and shall be regarded as supplemental and additional to powers conferred by other laws.

SECTION 11. This act shall become effective July 1, 1992.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 11th day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate