

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 991

By: Fisher of the Senate

and

McCorkell of the House

COMMITTEE SUBSTITUTE

An Act relating to economic development; amending 62 O.S. 1991, Section 695.8, as amended by Section 47, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 695.8), which relates to the Oklahoma Bond Oversight and Reform Act; amending 74 O.S. 1991, Sections 5062.6, 5062.6a, as amended by Section 46, Chapter 275, O.S.L. 1993, 5062.7 and 5062.10 (74 O.S. Supp. 1993, Section 5062.6a), which relate to the Oklahoma Development Finance Authority; amending 74 O.S. 1991, Sections 5063.1, as amended by Section 38, Chapter 275, O.S.L. 1993, 5063.3, as amended by Section 39, Chapter 275, O.S.L. 1993, 5063.4, as amended by Section 40, Chapter 275, O.S.L. 1993, 5063.4a, as amended by Section 41, Chapter 275, O.S.L. 1993, 5063.4c, as amended by Section 42, Chapter 275, O.S.L. 1993, 5063.4d, as amended by Section 43, Chapter 275, O.S.L. 1993, and Section 44, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5063.1, 5063.3, 5063.4, 5063.4a, 5063.4c, 5063.4d and 5063.4i), which relate to the Credit Enhancement Reserve Fund Act; amending Sections 26, 27, 28 and 30, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5086.1, 5086.2, 5086.3 and 5086.5), which relate to the Oklahoma Development Capital Corporation Act; modifying duties and responsibilities of the Executive and Legislative Bond Oversight Commissions; modifying provisions governing board of directors for the Oklahoma Development Finance Authority; requiring consolidation of governing board and prescribing procedures related thereto; providing for separate legal status; requiring segregation of funds; authorizing amendment of certain trust indentures; providing for effect of amendment; modifying provisions related to selection of president; deleting requirement for publication of certain policies; modifying provision with respect to Program Development and Credit Review Committee; modifying references; providing for selection of Oklahoma Development Finance Authority president; modifying applicability of limitation upon certain commitment by the Credit Enhancement Reserve Fund; providing exception for approval of certain obligations by Executive and Legislative Bond Oversight Commissions; modifying allocations for portfolio mix categories; modifying certain limitations with respect to principal loan amounts; modifying required security for certain types of loans; modifying limitations imposed upon

certain portfolio mix categories; modifying designation of Oklahoma Development Capital Corporation; providing for effect of guaranty issuance pursuant to the Quality Jobs Investment Program; prescribing procedures related to issuance; creating Quality Jobs Investment Program; defining term; modifying and deleting provisions related to the creation and governance of the Oklahoma Development Capital Corporation; providing for execution and implementation of Quality Jobs Investment Program; defining term; prescribing procedure related to formation of certain entity; prescribing criteria; providing for use of incentive payments; providing for investment of capital; modifying character of certain obligations; prescribing procedures related to certain guaranteed obligations; prescribing requirements related to certain capital; repealing Sections 29, 31, 32, 33, 34 and 35, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5086.4, 5086.6, 5086.7, 5086.8, 5086.9 and 5086.10), which relate to the Oklahoma Development Capital Corporation Act; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.8, as amended by Section 47, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 695.8), is amended to read as follows:

Section 695.8 A. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall:

1. Make determinations as to whether the purposes for which obligations proposed to be issued by a state governmental entity are for the furtherance and accomplishment of authorized and proper public functions or purposes of the state or of any county or municipality, as specified in the statutes governing public trusts organized pursuant to Title 60 of the Oklahoma Statutes;
2. Review proposed issuance of debt by State Governmental Entities for compliance with any applicable provisions of federal, state or other laws;
3. Review proposed issuances of obligations to fund capital additions or expenditures by local governmental entities which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state, for compliance with any applicable provisions of

federal, state or other laws, when such payment is a direct and expressed pledge for the then current fiscal year made by the state for the retirement of debt by a local governmental entity. Provided, funds which are collected by the state for distribution to a local governmental entity or are appropriated or dedicated by the state to a local governmental entity without the expressed purpose of retiring debt of said local governmental entity shall not constitute a pledge as provided in this paragraph;

4. Review the findings of the Program Development and Credit Review Committee to determine if the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority adequately and sufficiently fulfill the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes, provided such provision shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to the effective date of this act; and approve or disapprove any bonds or indebtedness being issued by the Oklahoma Development Finance Authority to the extent said bonds or indebtedness are enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes; however, the Commissions shall not review or approve obligations issued by the Oklahoma Development Finance Authority under the Small Business Credit Enhancement Program created by Section 5063.4b of Title 74 of the Oklahoma Statutes, or the Oklahoma Beginning Agricultural Producer Pool Act, Section 5063.21 et seq. of Title 74 of the Oklahoma Statutes; and

~~5. Review on an annual basis the portfolio of investments made pursuant to the Quality Jobs Investment Program supported by the Credit Enhancement Reserve Fund as provided in Section 44 of this act to determine if the Program adequately and sufficiently fulfills the intents and purposes of the Oklahoma Quality Jobs Program Act; and~~

~~6.~~ Adopt, amend and repeal rules and regulations to regulate affairs of the Commissions and to implement the powers and purposes of the Commissions.

B. The Commissions may establish budgets in order to fulfill their duties pursuant to Section 695.1 et seq. of this title and shall be authorized to charge and collect a fee, in accordance with the rules and regulations of the Commissions, derived from proceeds of bond issues approved by the Commissions.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 5062.6, is amended to read as follows:

Section 5062.6 A. Upon certification by the Governor of a public trust as qualifying to become the Oklahoma Development Finance Authority, the board of trustees of such trust shall become the governing board of the Oklahoma Development Finance Authority with the addition of two (2) other persons. ~~One person shall be the Director of the Department of Commerce who shall serve ex officio and who shall be a voting member of the board of the Authority. The Governor shall appoint one (1) person, qualified by outstanding knowledge, leadership and experience in the field of finance, for a term of office of two (2) years subject to the advice and consent of the Senate. Any vacancy in a position upon the board occupied by a member of the qualifying public trust or the gubernatorial appointee shall be filled by appointment of the Governor subject to the advice and consent of the Senate. Any position upon the board filled by appointment of the Governor shall be for a term equal to the term of office of the member whose term has expired. Appointments shall be made on the basis of outstanding knowledge, leadership and experience in the respective field of the appointee. If a vacancy occurs when the Senate is not in session, the Governor may appoint a member who shall exercise full powers until confirmation or rejection of the appointment by the Senate. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing~~ From and after the effective date of this act, the Governor, the board of directors

of the Oklahoma Development Finance Authority and the board of directors of the Oklahoma Industrial Finance Authority, governed by Section 851 of this title, shall begin the consolidation of the membership of the boards of both authorities. The Oklahoma Development Finance Authority is authorized to amend its trust indenture, to provide that its board shall be composed of the members of the board of directors of the Oklahoma Industrial Finance Authority except for the State Treasurer of Oklahoma and to provide that the terms of office of the board of directors of the Oklahoma Development Finance Authority shall be identical to the terms of the Oklahoma Industrial Finance Authority. Any director of the Oklahoma Development Finance Authority who is in office upon the effective date of this act, and who is not also at that time a member of the board of directors of the Oklahoma Industrial Finance Authority, shall finish the term for which he or she was appointed. Upon the end of such a director's term, or upon such a director vacating his or her office, the Governor shall appoint a member of the board of directors of the Oklahoma Industrial Finance Authority to fill the vacancy, or to the new term. The qualifications for the board of directors of the Oklahoma Development Finance Authority shall be identical to the qualifications for the board of directors of the Oklahoma Industrial Finance Authority. As soon as the two boards of directors of each authority are composed of the same members, the boards shall be considered as consolidated. From and after that consolidation, persons appointed to the board of directors of the Oklahoma Industrial Finance Authority shall also become directors of the Oklahoma Development Finance Authority. Even though the membership of each board shall be identical, the authorities shall be considered and treated as separate legal entities. The funds of each authority shall not be commingled and shall be separately accounted for. This consolidation of board membership shall not be construed as effecting a merger of estates or otherwise be construed to terminate the trust status of the Oklahoma Development Finance Authority. The Oklahoma Development Finance Authority shall continue to exist as a public trust, created under

the Oklahoma Public Trust Act, Section 176 et seq. of Title 60 of the Oklahoma Statutes. The S.S.C. Development Authority is hereby authorized to amend its trust indenture to permit the members of the Oklahoma Industrial Finance Authority to become the governing board of such trust. Any such amendment shall not affect the separate legal status of such trust. The governing and administrative powers of the Oklahoma Development Finance Authority shall be vested in the governing board as provided by this section.

B. Each appointive member may receive reimbursement for expenses pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of this title. In addition, each appointive member shall receive a monthly stipend of Three Hundred Dollars (\$300.00) if, during the month, the member attended a meeting of the board of directors at which a quorum was present. Provided, a member who is also to receive a stipend for attending, during said month, a board meeting of the Oklahoma Industrial Finance Authority shall not receive a stipend pursuant to this subsection for said month except to the extent that payment to the member may be divided between the two boards in proportion to the service rendered by the member to each board.

C. Members shall annually elect from among the membership a chairman, vice-chairman, secretary and treasurer, and may elect an assistant secretary or assistant secretaries who need not be members of the board. Four members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least four members shall be required for the approval of any resolution authorizing the issuance of any bonds or approving any loan transaction pursuant to Section 5062.1 et seq. of this title.

D. No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular, special, or emergency

meeting and shall take effect upon the date the chairman or vice-chairman certifies the action of the Authority by affixing his signature to the resolution unless some other date is otherwise provided in the resolution.

E. ~~The board shall appoint and employ a president. The board shall establish criteria for selecting the president taking into consideration national standards for similar positions in similar institutions in other states. The search for a president shall be conducted pursuant to the criteria so established. The president shall employ and terminate such other officers and employees as designated by the board.~~ The board may delegate to its president employees, persons under contract to provide administrative or staff services to the board, its members and/or officers of the Authority such duties as it deems necessary or convenient to carry out the purposes of this act. The board may contract with the Oklahoma Industrial Finance Authority to provide all or part of the board's administrative and staff services. Funds of the Oklahoma Development Finance Authority may be paid to the Oklahoma Industrial Finance Authority for services reasonably attributable to the operation of the Oklahoma Development Finance Authority.

F. Except as otherwise provided by law, no part of the funds of the Authority shall inure to the benefit of, or be distributed to its employees, officers, or board of directors, except that the Authority shall be authorized and empowered to pay its employees and agents reasonable compensation and benefits.

G. The meetings of the board of directors of the Oklahoma Development Finance Authority shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. Any information submitted to or compiled by the Oklahoma Development Finance Authority with respect to the marketing plans, financial statements, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the

subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the board of directors.

H. The Authority shall assist minority businesses in obtaining financial assistance. The terms and conditions of loans or other means of financial assistance, including the charges for interest and other services, will be consistent with the provisions of this act. The Authority shall solicit proposed minority business ventures for review and analysis.

~~I. The Authority shall adopt, publish and submit by January 1 of each year to Oklahoma Futures, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, appropriate administrative policies, including but not limited to policies governing the classification, employment, promotion, suspension, disciplinary action or dismissal of Authority employees and reimbursement of employees. All actions governed by said administrative policies shall be examined annually in the independent audit required by this act.~~

The Authority shall not be subject to state laws regulating the classification, employment, promotion, suspension, disciplinary action or dismissal of state employees. Except as otherwise provided by this act, the Oklahoma Development Finance Authority shall be subject to the provisions of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title. The Oklahoma Development Finance Authority shall be subject to the provisions of law governing administrative procedures pursuant to Title 75 of the Oklahoma Statutes.

J. If a member of the board of directors, officer, agent or employee of the Oklahoma Development Finance Authority has any direct or any indirect interest in any approval, contract or agreement upon which the member, officer, agent or employee may be called upon to act or vote, the board member, officer, agent or employee shall disclose the same to the secretary of the Authority prior to the taking of final action by the Authority concerning such contract or agreement and shall so disclose the nature and extent of such interest and his or her acquisition thereof, which

disclosure shall be publicly acknowledged by the Authority and entered upon the minutes of the Authority. If a board member, officer, agent or employee holds such an interest, he or she shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other board members, officers, agents or employees concerning said contract or agreement. Employees of the Oklahoma Development Finance Authority shall be subject to the provisions of Section 4241 of this title. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office, or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the Authority.

Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the Authority.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 5062.6a, as amended by Section 46, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5062.6a), is amended to read as follows:

Section 5062.6a A. There is hereby created the Program Development and Credit Review Committee within the Oklahoma Development Finance Authority. The committee shall be composed of three (3) members as follows:

1. One member who is designated by the board of directors of the Oklahoma Development Finance Authority;
2. One member who is the Oklahoma State Bond Advisor; and
3. One member who is jointly selected by the Oklahoma State Bond Advisor and by the designee of the Oklahoma Development Finance Authority; provided, the Oklahoma ~~State Bond Advisor~~

Development Finance Authority shall contract for the services of said member.

B. The Oklahoma Development Finance Authority shall provide all staff support required by the committee.

C. The meetings of the committee shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. Any information submitted to or compiled by the committee with respect to the marketing plans, financial statements, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the members of the committee.

D. If a member of the committee has any direct or any indirect interest in any approval, contract or agreement upon which the member may be called upon to act or vote, the member shall disclose the same to the committee prior to the taking of final action by the committee concerning such contract or agreement and shall so disclose the nature and extent of such interest and the member's acquisition thereof, which disclosure shall be publicly acknowledged by the committee and entered upon the minutes of the committee. If a member holds such an interest, the member shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office,

Req. No. 9471Page 10

or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the committee. Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the committee.

E. No member of the committee may be subject to any personal liability or accountability for having acted within the course and scope of the person's membership on the committee. The committee shall indemnify any member of the committee against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of past or present association with the committee and the subject of which was within the course and scope of the person's membership on the committee.

F. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to Section ~~44~~ 5063.4i of this ~~act~~ title, shall:

1. Prior to any action by the Oklahoma Development Finance Authority, review and approve all program development uses of the Credit Enhancement Reserve Fund;

2. Prior to any action by the Oklahoma Development Finance Authority, review and approve all commitments of the Credit Enhancement Reserve Fund; ~~and~~

3. Facilitate implementation of subsection ~~G~~ H of Section 5062.6 of this ~~title~~; and

~~The Oklahoma Development Finance Authority may accept or reject approvals of the committee, but may not modify the approvals.~~

~~G. 1. The committee shall review~~ 4. Review the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority to determine the adequacy and sufficiency of such rules, regulations and policies for fulfilling the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of this title. The committee shall prepare and provide to the ~~the~~ Executive and

Legislative Bond Oversight Commissions and the Oklahoma Development Finance Authority a written finding on such determination.

G. The Oklahoma Development Finance Authority may accept or reject approvals of the committee, but may not modify the approvals.

~~2.~~ H. On any application for financing proposed to be supported pursuant to the Credit Enhancement Reserve Fund Act, except for the ~~application pursuant to Section 44~~ Quality Jobs Investment Program authorized by Sections 5086.3 and 5086.5 of this act title, the application and any relevant materials considered by the Oklahoma Development Finance Authority when making a determination concerning the proposed financing shall be reviewed by the committee for the purpose of evaluating and assigning a credit rating based upon the risk of the venture and the ultimate risk of loss exposure to the Credit Enhancement Reserve Fund.

~~3.~~ I. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to Section ~~44~~ 5063.4i of this ~~act title~~, shall examine the credit analysis and due diligence on each such proposed financing and shall prepare and provide a written report to the Commissions and the Oklahoma Development Finance Authority concerning the credit rating and concerning sufficient compliance with the Rules Regarding the Administration of the Credit Enhancement Reserve Fund.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 5062.7, is amended to read as follows:

Section 5062.7 A. The board of directors of the Oklahoma Development Finance Authority shall appoint a president who shall direct and supervise the administrative affairs and the general management of the Authority. The board shall establish criteria for selecting the president taking into consideration national standards for similar positions in similar institutions in other states. The search for the president shall be conducted pursuant to the criteria so established. The president's salary shall be set by the board of directors. The board may appoint the same

person who is serving as, or is appointed to be, the chief executive officer or president of the Oklahoma Industrial Finance Authority. The board is authorized to pay the full salary of the president or may agree to share in this expense with the Oklahoma Industrial Finance Authority.

B. The president:

1. May employ and terminate such other officers and employees as designated by the board of directors, including, if necessary, legal counsel;

2. Shall attend board meetings;

3. Shall appoint a secretary to keep a record of all proceedings and maintain and be custodian of all financial and operational records, documents and papers filed with the Authority and of the minute book of the Authority; and

4. Shall perform other duties directed by action of the board of directors of the Authority in carrying out the purposes of this act.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 5062.10, is amended to read as follows:

Section 5062.10 A. The Authority shall have the power and is hereby authorized to borrow money and to issue its bonds in such principal amounts as the Authority determines shall be necessary to provide sufficient funds for: (a) the providing of financing for all or any part of any projects of the state or any of its political subdivisions as authorized under ~~this act~~ Section 5062.1 et seq. of this title; (b) the providing of financing assistance to the state or political subdivisions as authorized under this act; (c) the payment of interest on bonds of the Authority; (d) the establishment of reserves to secure the bonds; and (e) all other expenditures of the Authority incident to and necessary or convenient to carry out its purposes and powers, including the payment of any credit enhancement fees and costs of issuance incurred in connection with the issuance of bonds. The Authority shall have the power to make expenditures for purposes of insuring and securing holders of bonds as provided in this act.

B. The Authority shall have the power to refund any bonds and any bonds, notes or other obligations heretofore or hereafter issued by any other issuer of bonds in the state if the Authority is authorized hereunder to issue bonds for the purpose the refunded bonds were issued by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. Refunding bonds may be issued in such amount as the Authority may determine, but not exceeding an amount sufficient to refund the principal amount of the bonds or notes to be refunded, together with any unpaid interest accrued and to accrue thereon and any premiums, expenses and commissions incurred in connection with the issuance of such refunding bonds and any reserve established in connection with the issuance of such refunding bonds. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded, all as determined by the Authority.

C. All bonds of the Authority shall be either (i) general obligations of the Authority, secured by any and all moneys and revenues of the Authority, (ii) special and limited obligations of the Authority, secured and payable solely out of the revenues and receipts derived pursuant to a financing agreement, or (iii) both general and special limited obligations, as may be designated in the proceedings of the Authority under which the bonds shall be authorized to be issued.

D. The bonds shall be authorized by resolution or resolutions of the Authority, shall be dated such date or dates, and shall mature at such time or times as such resolution or resolutions may provide. The bonds shall bear interest at such rate or rates or contain terms providing for the means of determining such rate or rates, including variations in such rates, but not to exceed an average interest rate of fourteen percent (14%) per annum if the interest thereon is not includable in the gross income of the recipients thereof for federal income tax purposes or eighteen percent (18%) per annum if the interest thereon is includable in

the gross income of recipients thereof for federal income tax purposes, be in such denomination, be in such form, either coupon or registered, or in book-entry form, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such term of redemption, including redemptions prior to maturity, as such resolution or resolutions may provide. The bonds of the Authority may be sold by the Authority at public or private sale, and at the price or prices as the Authority shall determine.

E. Any resolution or resolutions authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the owners thereof, as to:

1. Pledging all or any part of the revenues to secure the payment of the bonds or of any issue thereof, subject to such agreements with bondowners as may then exist;

2. Pledging all or any part of the assets of the Authority, including mortgages and obligations securing the same, to secure the payment of the bonds or of any issue of bonds, subject to the agreements with bondowners as may then exist;

3. The use and disposition of the gross income from assets of any type owned by the Authority and payment of principal of assets of any type owned by the Authority;

4. The setting aside of reserves or sinking funds and the regulations and disposition thereof;

5. Limitations on the purpose to which the proceeds of sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; and the refunding of outstanding or other bonds;

7. The procedure, if any, by which the terms of any contract with bondowners may be amended or abrogated, the amount of bonds the owners of which must consent thereto, and the manner in which the consent may be given;

8. Vesting in a trustee such property, rights, powers and duties in trust as the Authority may determine, which may include

any or all of the rights, powers, and duties of the trustee appointed by the bondowners pursuant to this act and limiting or abrogating the right of bondowners to appoint a trustee under this act or limiting the rights, powers, and duties of the trustee;

9. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the Authority to the owners of the bonds and providing for the rights and remedies of the owners of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this act; and

10. Any other matters, of like or different character, which in any way affect the security or protection of the owners of the bonds.

F. Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenues, monies, or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of trust indenture whether the parties have notice thereof. Neither the resolution, trust indenture nor any other instrument by which a pledge is created need be recorded.

G. Bonds of the Authority may be secured by resolution of the Authority or a trust indenture or similar document by and between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the state. Such resolution, trust indenture or similar document may contain such provisions for protecting and enforcing the rights and remedies of the bondowners as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its corporate powers and the custody, safeguarding and application of all monies. The Authority may provide by the resolution or

trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

H. Whether or not the bonds are of the form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, Section 1-101 et seq. of Title 12A of the Oklahoma Statutes, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds relating to registration.

I. In the event that any of the members or officers of the Authority shall cease to be members or officers of the Authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

J. Neither the members of the Authority nor any other person executing the bonds issued under this act shall be subject to personal liability or accountability by reason of the issuance thereof.

K. The Authority shall have the power to provide for the replacement of lost, destroyed, or mutilated bonds.

L. Except as provided by the Credit Enhancement Reserve Fund Act, Section 5063.2 et seq. of this title, bonds issued pursuant to the provisions of this act shall never constitute an indebtedness of the state within the meaning of any state constitutional provision or statutory limitation, but such bonds shall be indebtedness payable solely from sources indicated on the bond documents, and shall never constitute nor give rise to a pecuniary liability of this state or unspecified funds of the Authority or a charge against the general credit of the state or taxing powers of the state, and such fact shall be plainly stated on the face of each bond.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 5063.1, as amended by Section 38, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5063.1), is amended to read as follows:

Section 5063.1 Sections 5063.1 through 5063.19, including Sections 5063.4a through ~~5063.4h~~ 5063.4i, of this title ~~and Section 44 of this act~~ shall be known and may be cited as the "Credit Enhancement Reserve Fund Act".

SECTION 7. AMENDATORY 74 O.S. 1991, Section 5063.3, as amended by Section 39, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5063.3), is amended to read as follows:

Section 5063.3 A. There is hereby created a fund to be known as the Credit Enhancement Reserve Fund. The Fund shall be managed, administered and utilized by the Oklahoma Development Finance Authority in accordance with the provisions of this act.

B. It is the intent of the Legislature that the Fund be self-supporting from insurance premiums charged to borrowers and that such charges be based on sound actuarial practices. The proceeds of obligations to which credit enhancement is granted shall be used, except for unusual circumstances with exceptionally strong public benefits, for expansion capital to businesses and to make improvements or additions to real or personal property in the case of private or nonprofit use borrowers. Use of the Fund for business buyouts or refinancing shall be minimal. The Authority shall give reasonable priority to loans in rural areas. In implementing the provisions of the Credit Enhancement Reserve Fund Act, the Authority shall generally limit the granting of credit enhancement by the Fund to high to moderate credit quality revenue bonds or other obligations issued by the Authority, except as provided in Section 5063.4b and 5063.4i of this title ~~or in Section 44 of this act~~. High to moderate credit quality means revenue bonds or other obligations of the Authority judged to be of low to moderate risk, meaning that an obligation to which credit enhancement is granted demonstrates a strong likelihood of repayment according to its terms. Credit quality shall be determined by the Program Development and Credit Review Committee. To the extent possible, the Fund shall be leveraged with private

Req. No. 9471Page 18

financial assistance for Fund-backed obligations for private or nonprofit borrowers.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 5063.4, as amended by Section 40, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5063.4), is amended to read as follows:

Section 5063.4 A. The Fund shall be employed by the Oklahoma Development Finance Authority solely to secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, for the specific purpose of enhancing and supporting the credit of such revenue bonds and other financial obligations. Such other financial obligations may include guarantees, loans, letters of credit or other similar obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, and may include commitments by the Authority for the Fund to secure loans made by private financial institutions. Except for the financial obligation provided in Section ~~44~~ 5063.4i of this ~~act~~ title, each such other financial obligation must be secured by a first lien security interest on real estate, equipment or inventory, and, except as provided in ~~Section~~ Sections 5063.4i and 5063.4b of this title, the amount of the commitment by the Fund shall not exceed twenty-five percent (25%) of the value of the collateral securing each such financial transaction. No portion of the monies or other assets deposited to the Fund shall be expended or otherwise used by the Authority in meeting its day-to-day operating expenses, in paying the cost of issuance of the Authority's revenue bonds or other financial obligations, or in supporting any other activity of the Authority not directly related to the Credit Enhancement Reserve Fund or to enhancing the credit of the Authority's revenue bonds and other financial obligations.

B. The Authority shall administer the Fund prudently and according to good insurance practice. Such administration will minimize the loss experience of the Fund, assure the future viability of the Fund, and assure the continuing availability of the proceeds of general obligation bonds issued pursuant to

Section 5063.11 ~~hereof~~ of this title as a credit enhancement vehicle for bond issues in this state on an ongoing basis. Accordingly, the granting of credit enhancement by the Fund shall be based on principles of insurability generally applied in the credit enhancement/insurance industry. The Authority is authorized and directed to adopt initial rules and regulations governing the credit enhancement activities and administration of the Fund, including rules and regulations dealing with the subjects of project feasibility, credit evaluation, collateral evaluation, reinsurance, maximum risk retention by the Fund, avoidance of adverse risk selection, and all other factors deemed relevant by the Authority to the decision whether the Fund should provide credit enhancement to a particular issue of debt, to what extent, on what terms, and for what premium rate.

C. The initial rules and regulations for administration of the Fund promulgated by the Authority pursuant to subsection B of this section shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

D. No general obligation bonds may be issued pursuant to Section 5063.11 of this title except upon the approval by a vote of the people of the State of Oklahoma authorizing the Oklahoma Development Finance Authority to issue general obligation bonds for the purposes set forth in this act and unless and until initial rules and regulations governing administration of the Fund have been adopted by the Authority. The Authority by resolution or other appropriate action of the Authority shall determine each issue of bonds or portions thereof with respect to which the benefits of the act shall inure.

E. The Authority is authorized to amend the initial rules and regulations governing administration of the Fund, either by addition of new rules and regulations, or a change or repeal of existing rules and regulations; provided, that such amendment, whether by addition, change or repeal, shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

F. ~~Credit~~ Except for obligations, bonds, notes, or other evidences of indebtedness issued under the Quality Jobs Investment Program created by Sections 5086.3 and 5086.5 of this title, or the Small Business Credit Enhancement Program created by Section 5063.4b of this title, credit enhancement by the Fund for any bonds or other financial obligations issued by the Authority pursuant to law shall also require approval of the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission as provided by law.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 5063.4a, as amended by Section 41, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5063.4a), is amended to read as follows:

Section 5063.4a A. Credit enhancement granted by the Oklahoma Development Finance Authority shall be categorized by use as portfolio mix categories as follows:

1. Industrial, agribusiness, and other private activity;
2. Infrastructure and other publicly owned facilities of governmental entities;
3. Health care and other nonprofit-owned facilities; and
4. The Quality Jobs Investment Program established pursuant to ~~Section 30~~ Sections 5086.3 and 5086.5 of this act title.

B. The balance, as determined by the total principal amount authorized pursuant to Section 5063.11 of this title less the amount of Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to June 9, 1990, less the amount allocated pursuant to Section ~~44~~ 5063.4i of this ~~act~~ title, shall be allocated to the portfolio mix categories as follows:

1. ~~Fifty percent (50%)~~ Twenty-five percent (25%) of said balance shall be allocated to the industrial, agribusiness, and other private activity portfolio mix category; and
2. ~~Thirty-five percent (35%)~~ Seventy-five percent (75%) of said balance shall be allocated to the infrastructure and other publicly owned facilities of governmental entities portfolio mix category; ~~and~~

~~3. Fifteen percent (15%) of said balance shall be allocated to the, health care and other nonprofit-owned facilities portfolio mix category.~~

C. The Authority is authorized to credit enhance and secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued pursuant to the Oklahoma Development Finance Authority Act and the Credit Enhancement Reserve Fund Act. Except as used for the Small Business Credit Enhancement Program, ~~any loans for which the Authority issues credit-enhanced~~ the original principal amount of a credit enhancement commitment of the Authority granted to obligations in the industrial, agribusiness, and other private activity portfolio mix category ~~or to the health care and other nonprofit-owned facilities portfolio mix category shall be subject to the following limitations:~~

~~1. The original principal amount of a credit enhancement commitment of the Authority shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ÷~~

~~2. At the time of the Authority's issuance of credit enhancement on its revenue bonds or other financial obligations, the principal amount of the underlying loan may not exceed ninety percent (90%) of the certified and documented costs of the project to be financed by the loan. It shall be the borrower's responsibility for obtaining from another lender the remaining minimum ten percent (10%) of the project cost through a loan which shall have a term at least equal to forty percent (40%) of the term of the Authority loan if for the term of ten (10) years or less, or for a term equal to forty percent (40%) of the first ten (10) years plus twenty percent (20%) of any portion of the term of the Authority loan in excess of ten (10) years.~~

D. To maximize use of the credit enhancement resource and to assure the viability of the Fund, the Fund shall have a balanced portfolio by loan size. In the case of the industrial, agribusiness, and other private activity portfolio mix category ~~and the health care and other nonprofit-owned facilities portfolio mix category,~~ the Fund shall strive to achieve a cumulative

average loan size of less than One Million Dollars
(\$1,000,000.00).

SECTION 10. AMENDATORY 74 O.S. 1991, Section 5063.4c,
as amended by Section 42, Chapter 275, O.S.L. 1993 (74 O.S. Supp.
1993, Section 5063.4c), is amended to read as follows:

Section 5063.4c At the time of loan origination, the Oklahoma
Development Finance Authority shall require such security from the
applicant as it deems necessary in the circumstances of the
insurance commitment. ~~Except for the infrastructure and other
publicly owned facilities of governmental entities and Quality
Jobs Investment Program portfolio mix categories, such~~ The
security for loans in the industrial, agribusiness, and other
private activity portfolio mix category will include, but not be
limited to:

1. A first mortgage or coordinate first mortgage on real
property, facilities or systems and fixtures located thereon; or
2. A second mortgage on real property, facilities or systems
and fixtures located thereon, provided the amount thereof may not
exceed One Million Dollars (\$1,000,000.00).

SECTION 11. AMENDATORY 74 O.S. 1991, Section 5063.4d,
as amended by Section 43, Chapter 275, O.S.L. 1993 (74 O.S. Supp.
1993, Section 5063.4d), is amended to read as follows:

Section 5063.4d A. At the time of the Authority's issuance
of credit enhancement on its revenue bonds or other obligations,
the principal amount of the underlying loan for industrial,
agribusiness, and other private activity portfolio mix category
~~and health care and other nonprofit-owned facilities portfolio mix
category~~ financings, ~~excluding infrastructure and other publicly
owned facilities of government entities and Quality Jobs
Investment Program portfolio mix category financings,~~ shall be
subject to the following limitations:

1. For costs of financing or refinancing real property,
including soft costs associated with the construction or
development of the facilities and the insurance premium, the
principal amount of the underlying loan will not exceed ninety
percent (90%) of the lower of:

- a. the actual certified and documented costs of such projects, or
- b. the appraised (as built) fair market value of the real property as indicated in an independent appraisal by an appraiser acceptable to the Authority;

2. For costs of financing the acquisition of personal property, machinery and equipment, the principal amount of the loan will not exceed seventy-five percent (75%) of the actual certified or documented installation cost, including the expense of delivery, refurbishing and installation. The Authority may require an independent appraisal in connection with establishing a fair market value of such personal property and in such case, the principal amount of the loan may not exceed seventy-five percent (75%) of the lower of:

- a. the fair market value of such personal property, or
- b. its documented installed costs;

3. The principal amount of a loan, or portions thereof, secured by accounts receivable, inventory, other current assets and other personal property will not exceed fifty percent (50%) of the value of the collateral as determined by the Oklahoma Development Finance Authority; and

4. The principal amount of a loan, or portions thereof, secured by cash or cash equivalents or by eligible investment securities will not exceed one hundred percent (100%) of their market value.

B. The maximum amount of an insurance commitment in enhancing a public sector entity financing or refinancing of facilities or program participation will not exceed one hundred percent (100%) of the entity's cost of financing, refinancing or program participation.

C. The provisions of this section shall not apply to credit enhancement of less than One Hundred Thousand Dollars (\$100,000.00) done pursuant to the Small Business Credit Enhancement Program.

D. Limitations on the authorized amounts as established in this section and in Section 5063.4a of this title notwithstanding, the Authority may increase such amounts to provide a cash reserve or to secure a letter of credit or surety bond equal to six-months' principal and interest payments on its revenue bonds or other obligations which fund the underlying loan.

SECTION 12. AMENDATORY Section 44, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5063.4i), is amended to read as follows:

Section 5063.4i A. The Oklahoma Development Finance Authority may employ the Credit Enhancement Reserve Fund by issuing obligations in the form of guarantees of obligations made by the Oklahoma ~~Development~~ Business Capital Corporation Company for implementation of the Quality Jobs Investment Program established pursuant to ~~Section 30~~ Sections 5086.3 and 5086.5 of this ~~act~~ title. Forty percent (40%) of the amount authorized pursuant to Section 5063.11 of ~~Title 74 of the Oklahoma Statutes~~ this title is hereby allocated and may be used for the Quality Jobs Investment Program. The Authority may not issue its obligations for the benefit of individual identified establishments but may issue its obligations in advance to cover a prospective pool of investments to be made by the Oklahoma ~~Development~~ Business Capital Corporation Company. The Authority may review on an annual basis the portfolio of investments of the Oklahoma ~~Development~~ Business Capital Corporation Company backed by the guarantee of the Authority.

B. Any guaranty provided by the Authority under the Quality Jobs Investment Program shall be considered an obligation of the Authority for purposes of Section 42 of Article X of the Oklahoma Constitution. The Authority is authorized to issue other obligations in the form of bonds, notes, or other evidences of indebtedness, to raise funds for investment in or by the Oklahoma Business Capital Company under the Quality Jobs Investment Program. Any obligations, bonds, notes, or other evidences of indebtedness issued under the Quality Jobs Investment Program may

be secured by the Credit Enhancement Reserve Fund, pursuant to Section 5063.1 et seq. of this title.

SECTION 13. AMENDATORY Section 26, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5086.1), is amended to read as follows:

Section 5086.1 ~~Sections 26 through 35~~ Section 5086.1 et seq. of this ~~act~~ title shall be known and may be cited as the "Oklahoma Development Capital ~~Corporation~~ Company Act".

SECTION 14. AMENDATORY Section 27, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5086.2), is amended to read as follows:

Section 5086.2 It is hereby declared to be the purpose of ~~this act~~ Section 5086.1 et seq. of this title and the ~~Oklahoma Development Capital Corporation~~ Quality Jobs Investment Program created by Sections 5086.3 and 5086.5 of this act title to assist in the diversification of the Oklahoma economy, to help private business enterprise in obtaining additional sources of capital, to foster export activity, and to address market inefficiencies by expanding the private sector role of providing investment capital.

SECTION 15. AMENDATORY Section 28, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5086.3), is amended to read as follows:

Section 5086.3 ~~A.~~ There is hereby created a ~~corporation~~ program, to be known as the ~~Oklahoma Development Capital Corporation~~ Quality Jobs Investment Program. For purposes of the Oklahoma ~~Development Business Capital Corporation~~ Company Act, the term "~~Corporation~~" "Program" shall mean the ~~Oklahoma Development Capital Corporation~~ Quality Jobs Investment Program, and the term "Act" shall mean the Oklahoma ~~Development Business Capital Corporation~~ Company Act. ~~The rights and obligations of the shareholders and the affairs of the Corporation shall be governed first by the mandatory provisions of this Act, second by the mandatory provisions of the Oklahoma General Corporation Act, third by the Corporation's bylaws, and fourth by the optional provisions of this Act and the Oklahoma General Corporation Act. In the event of any conflict among the foregoing, the conflict~~

~~shall be resolved in the order of priority set forth in the previous sentence.~~

~~B. The Act shall serve as the certificate of incorporation and shall be deemed to have met the requirements of Sections 1005 and 1006 of Title 18 of the Oklahoma Statutes regarding the formation of the Oklahoma Development Capital Corporation. The Secretary of State shall serve as the Corporation's registered agent. Within thirty (30) days after the date the Corporation is activated, the President of the Corporation shall provide the Secretary of State the address of the Corporation in the State of Oklahoma and the total number and type of shares of stock which the Corporation shall have authority to issue along with the par or stated value of each type of share. For purposes of this section, the term "activated" shall mean the moment the Board of Directors of the Corporation appoints the first President of the Corporation. The Corporation shall not be subject to the incorporation filing fee normally payable to the Secretary of State.~~

~~C. Prior to the issuance of capital stock of the Corporation, and the election of all the Corporation's Board of Directors, the Organizational Group is authorized and shall take such actions as it deems necessary to bring about the activation of the Corporation. The Director of the Oklahoma Commerce Department, the members elected to the Corporation's Board of Directors by the members of the Oklahoma Industrial Finance Authority Board of Directors, the Oklahoma Development Finance Authority Board of Directors, and the Oklahoma Capital Investment Board of Directors pursuant to subsection D of this section shall collectively serve as the Organizational Group. The Organizational Group is authorized to appoint an organizational manager to assist the Organizational Group in activating the Corporation. The Organizational Group is authorized to issue capital stock of the Corporation pursuant to terms set by the Organizational Group to those private entities which are to be stockholders of the Corporation. The Organizational Group shall call an initial meeting of the shareholders of the Corporation for purposes of~~

~~electing the five members of the Board of Directors who are to be elected by the shareholders of the Corporation pursuant to subsection D of this section. Upon the election of a majority of the nine members of the Corporation's Board of Directors, the Organizational Group shall be dissolved and the Board of Directors shall administer the Corporation.~~

~~D. The Corporation shall be administered by a Board of Directors which shall consist of nine (9) members as follows: The Director of the Oklahoma Commerce Department, one member elected by a majority vote of the members of the Oklahoma Industrial Finance Authority Board of Directors, one member elected by a majority vote of the members of the Oklahoma Development Finance Authority Board of Directors, one member elected by a majority vote of the Oklahoma Capital Investment Board of Directors, and five members elected by those private sector entities which are shareholders of the Corporation.~~

~~E. 1. The member elected by the Oklahoma Industrial Finance Authority Board of Directors shall serve an initial term of office which shall expire June 30, 1994. The member thereafter elected by the Oklahoma Industrial Finance Authority Board of Directors shall serve a term of office of six (6) years.~~

~~2. The member elected by the Oklahoma Development Finance Authority Board of Directors shall serve an initial term of office which shall expire June 30, 1995. The member thereafter elected by the Oklahoma Development Finance Authority Board of Directors shall serve a term of office of six (6) years.~~

~~3. The member elected by the Oklahoma Capital Investment Board of Directors shall serve an initial term of office which shall expire June 30, 1996. The member thereafter elected by the Oklahoma Capital Investment Board of Directors shall serve a term of office of six (6) years.~~

~~F. The Board of Directors shall elect one of its members as Chairman of the Board at its annual meeting. The Chairman of the Board shall preside over the meetings of the Board and perform such other duties as may be required by the Board. The Board of Directors shall also elect another member to serve as Vice~~

~~Chairman of the Board, and the Vice Chairman shall perform duties of the Chairman in the absence of the Chairman or upon the inability or refusal of the Chairman to act.~~

~~G. The Board of Directors shall hold regular meetings in the State of Oklahoma at least once each quarter, the dates, time and place thereof to be fixed by the Board. The Board shall hold a regular meeting in July of each year which meeting shall be the annual meeting and at which meeting it shall elect its Chairman. Special meetings may be called upon written call of the Chairman or by agreement of any five (5) members of the Board. Notice of a special meeting shall be delivered to all Board members in person or by registered or certified United States mail not less than seven (7) days prior to the date fixed for the meeting; provided, however, that notice of such meeting may be waived by any member either before or after such meeting and attendance at such meeting shall constitute a waiver of notice of such meeting, unless a member participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.~~

~~H. Five (5) directors shall constitute a quorum for the transaction of business, but any official action of the Board shall be based upon a favorable vote by at least five (5) directors at a regular or special meeting of the Board of Directors.~~

~~I. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the bylaws of the Corporation.~~

SECTION 16. AMENDATORY Section 30, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Section 5086.5), is amended to read as follows:

Section 5086.5 A. ~~In addition to engaging in any lawful act or activity for which corporations may be organized under the Oklahoma General Corporation Act, the~~ The primary activities of the Corporation Quality Jobs Investment Program are:

1. To utilize ~~the Corporation's~~ private and public resources to build a more comprehensive and efficient public and private

financing infrastructure for businesses relocating or expanding in the State of Oklahoma, and not solely for direct investment, lending or guarantees;

2. To act as an investor, insurer or ~~grantor~~ guarantor of business capital and debt financing in the State of Oklahoma;

3. To inform business entities of available public and private capital sources and how to access those sources; and

4. To primarily function as a wholesaler of business capital and credit and rely principally on private institutions to serve as retailers of the business capital and credit market.

~~B. The Corporation shall administer the Quality Jobs Investment Program established pursuant to this act. An establishment engaged in a basic industry as defined in Section 3 of this act may apply for an investment of capital from the Corporation. To~~ activities of the Program shall be carried out by a private business investment entity organized for such purpose. For the purposes of this act, the term "Company" shall mean such private business investment entity. Any private business investment entity shall be eligible to be the Company, as provided by this act, upon certification by the Oklahoma Department of Commerce that the Company's documents of organization are in compliance with the purposes and requirements of the Quality Jobs Investment Program and will promote the activities of the Program and that the Company meets the following criteria:

1. Is organized pursuant to Oklahoma law;

2. Has obtained a broad base of investor participation to the extent possible from among the following categories of investors: utility companies, insurance companies, pension systems, foundations, private and public trusts, banks, individuals, corporations, endowment funds, venture capital entities, and other investors and financial institutions;

3. Has ensured that no one category of investors shall exercise more than thirty-five percent (35%) of the voting rights of all voting investors of the Company;

4. Will maintain standards of care of a fiduciary pursuant to the Oklahoma Revised Uniform Limited Partnership Act, Section 301 et seq. of Title 54 of the Oklahoma Statutes; and

5. Provides that the Secretary of Commerce or a Director of the Oklahoma Development Finance Authority may serve as a special advisor to the manager of the Company.

C. For establishments that have qualified pursuant to the Oklahoma Quality Jobs Program Act, Section 3601 et seq. of Title 68 of the Oklahoma Statutes, to receive an investment of capital from the ~~Corporation Company~~, ~~the establishment must to the extent~~ such capital is directly supported by the Credit Enhancement Reserve Fund of the Oklahoma Development Finance Authority, a business shall assign ~~any~~ that pro rata portion of the incentive payments received pursuant to the provisions of the Oklahoma Quality Jobs Program Act to the Credit Enhancement Reserve Fund of the Oklahoma Development Finance Authority under such terms and conditions as may be established pursuant to contract with the ~~Corporation Company~~.

~~C. The Corporation shall promulgate procedures whereby an investment by the Corporation would be funded equally by those private sector entities which are shareholders of the Corporation and pledged state resources. Provided, however, that the contributed equity by those private sector entities which are shareholders of the Corporation shall be liquidated prior to calling on the resources pledged by the State of Oklahoma in the event of a loss incurred by the Corporation.~~

D. The ~~Corporation Company~~ shall seek a loan, investment, guarantee, letter of credit or other instrument of financial obligation from the Oklahoma Development Finance Authority which shall be backed by an obligation of the Credit Enhancement Reserve Fund in the amount of Forty Million Dollars (\$40,000,000.00) to initially capitalize and support the Quality Jobs Investment Program. ~~As incentive payments are assigned to the Corporation, an equal amount of the Credit Enhancement Reserve Fund obligation pledged by the Oklahoma Development Finance Authority shall not be available for investment by the Corporation.~~

E. The Company shall establish procedures within its documents of organization whereby the Company shall draw on the guaranteed obligations issued by the Company or the Oklahoma Development Finance Authority pursuant to Section 5063.4i of this title in amounts no greater than the Company draws on the capital committed by the Company's private investors. The procedures shall provide that upon liquidation of the Company, the capital contributed by those private sector entities which are investors in the Company shall be liquidated prior to calling on the guarantee of the Oklahoma Development Finance Authority issued pursuant to Section 5063.4i of this title.

F. ~~The Corporation Company shall not invest in or provide guarantee for capital projects located outside~~ employ the guaranteed capital raised pursuant to Section 5063.4i of this title to benefit the State of Oklahoma. A description of expected benefits and a plan for achieving said benefits shall be approved by the Oklahoma Department of Commerce.

SECTION 17. REPEALER Sections 29, 31, 32, 33, 34 and 35, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5086.4, 5086.6, 5086.7, 5086.8, 5086.9 and 5086.10), are hereby repealed.

SECTION 18. This act shall become effective July 1, 1994.

SECTION 19. 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.

44-2-9471

MAH