

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
SENATE BILL NO. 991

By: Fisher of the Senate

and

McCorkell of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economic development; amending 62 O.S. 1991, Sections 695.8, as amended by Section 47, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 695.8) and 74 O.S. 1991, Sections 5062.6, 5062.6a, as amended by Section 46, Chapter 275, O.S.L. 1993, 5062.7, 5063.1, 5063.3, 5063.4 and 5063.4a, as amended by Sections 38, 39, 40 and 41, Chapter 275, O.S.L. 1993 and Section 44, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5062.6a, 5063.1, 5063.3, 5063.4, 5063.4a and 5063.4i), which relate to bond oversight, credit enhancement, the Oklahoma Development Capital Corporation and the Quality Jobs Investment Program; modifying requirement for review and approval of obligations or credit enhancement under certain programs; deleting requirement that Commissions review certain portfolio; deleting provisions relating to appointment of Oklahoma Development Finance Authority board of trustees and providing for consolidation with Oklahoma Industrial Finance Authority board of directors; clarifying that authorities are separate legal entities; prohibiting commingling of funds of authorities; construing effect of merger; authorizing merger of certain other trust with authorities upon certain action; deleting certain requirements for president of Oklahoma Development Finance Authority and providing for delegation of duties to certain persons; authorizing certain contract for administrative and staff services and certain reimbursement; deleting requirement for audit and publishing of certain administrative policies; modifying responsibility for contracting with third member of certain committee; clarifying language; providing certain requirements for selecting president of Oklahoma Development Finance Authority and authorizing authorities to use same person for chief executive officer; authorizing Oklahoma Development Finance Authority to make certain investments and provide certain guarantees; defining term; establishing Quality Jobs Investment Program and describing primary activities; authorizing Oklahoma Department of Commerce to select and certify certain investment enterprises; stating criteria; authorizing certain entities to seek certain investment and guarantees; requiring contracts provide for performance standards and review; setting conditions for continuing to draw on certain investments and guarantees; providing for review of certain obligations at certain

levels of funding; requiring certain conditions be met to draw on next level of obligations; clarifying status of guarantee; providing for issuance of other evidences of indebtedness; placing certain conditions on investments and guarantees of the Authority; restricting and permitting certain activities of certain directors and staff; clarifying statutory reference; making exception to approval of credit enhancement of evidences of indebtedness issued under certain programs; modifying certain portfolio categories for credit enhancement; deleting authorization for certain review; modifying ratio of credit enhancement allocated to certain portfolio categories; exempting certain category from certain cap; deleting requirement for certain lender participation; modifying use of credit enhancement for certain investment program; repealing Sections 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5086.1, 5086.2, 5086.3, 5086.4, 5086.5, 5086.6, 5086.7, 5086.8, 5086.9 and 5086.10), which relate to the Oklahoma Development Capital Corporation; providing for codification; 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. a. ~~Review~~ Except as provided in subparagraph b of this paragraph, 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, except as provided in subparagraph b of this paragraph, 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~~;~~.
- b. The Bond Oversight Commissions shall not be required to review or approve individual projects or loans 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, but may approve a package of such projects or loans in

advance. Each project or loan shall be individually listed in the package and the dollar amount of the project or loan shall be specifically set out together with the total dollar amount involved in the package. The Commissions or the State Bond Advisor may, in their discretion, remove any such individual project or loan from the package submitted, for individual action. Should the Oklahoma Development Finance Authority submit an application to the Commissions for the approval of an obligation or credit enhancement under these two programs, the application shall be deemed approved if not disapproved by the Commissions within forty-five (45) days of filing such an application or, as to an individual project or loan, removed from the submitted package within such forty-five-day period; 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, 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 5 of this act and 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 established by Section 5 of this act and Section 5063.4i 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 5 of this act and 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5062.8a of Title 74, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Development Finance Authority is authorized to attract private investment capital to one or more investment enterprises by either the direct investment of Authority funds or by providing a guarantee to the investment enterprise for the purpose of implementing the Quality Jobs Investment Program established pursuant to this section.

2. As used in this section, "investment enterprise" includes any corporation, limited partnership, or other similar business entity, including entities qualifying as Small Business Investment Companies under any applicable federal law.

B. There is hereby established the Quality Jobs Investment Program. The primary activities of the Quality Jobs Investment Program shall be:

1. To utilize 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 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.

C. The Oklahoma Department of Commerce shall select on a competitive basis and certify one or more investment enterprises to carry out the activities of the Program. In order to be

certified by the Department, the documents of organization of the investment enterprise must be in compliance with the purposes and requirements of the Quality Jobs Investment Program and must promote the activities of the Program, and the investment enterprise must meet 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; and

3. Will maintain appropriate standards of care of a fiduciary.

D. 1. Only those investment enterprises selected and certified by the Oklahoma Department of Commerce pursuant to subsection C of this section may seek from the Authority a direct investment of funds pursuant to this section or a guarantee backed by the allocation of the Credit Enhancement Reserve Fund set forth in Section 5063.4i of Title 74 of the Oklahoma Statutes.

2. Contracts entered into by the Authority pursuant to this section shall establish and provide for periodic review of performance standards for each investment enterprise and shall provide that an investment enterprise may continue to draw on an investment or guarantee of the Authority only if the investment enterprise meets such performance standards.

3. The Authority shall, at a minimum, review its obligations to investment enterprises which are backed by the allocation of the Credit Enhancement Reserve Fund at a time when such obligations reach the levels of Ten Million Dollars (\$10,000,000.00), Twenty Million Dollars (\$20,000,000.00) and Thirty Million Dollars (\$30,000,000.00). Only upon satisfaction by the Authority that performance standards established by contract are being achieved by the investment enterprises for the prior level of such obligations, and approval of the Executive and Legislative Bond Oversight Commission, may the Authority allow

investment enterprises to draw on the next level of such obligations. Provided, the Authority may reserve any portion of the Forty Million Dollar (\$40,000,000.00) allocation of the Credit Enhancement Reserve Fund for commitment to one or more investment enterprises.

E. Any guarantee provided by the Authority under this section 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 under this section.

F. 1. Funds invested or obligated pursuant to a guarantee by the Authority in any investment enterprise shall be matched at least equally by private sector investment. Funds guaranteed or invested by the Authority may be employed by an investment enterprise at the same rate but not faster than the investment enterprise employs matching private sector investment. The Authority may only invest in or provide a guarantee to an investment enterprise pursuant to an agreement which provides that the equity of the participating private sector entities must be put at risk or liquidated before any funds or guarantees of the Authority are similarly put at risk or liquidated.

2. The Authority may not issue its obligations for the benefit of individual identified establishments but may only invest in or provide guarantees under this section to or for a prospective pool of investments to be made by investment enterprises. The Authority may review on an annual basis the portfolio of such investments of the investment enterprises.

3. An investment enterprise shall only employ funds invested or guaranteed by the Authority pursuant to this section for the benefit of projects within this state.

G. Directors and staff of the Authority shall not be officers or directors of the investment enterprises receiving investments or other obligations from the Authority. However, the directors and staff may be designated as advisory directors of any such

investment enterprises, so that the input and views of the Authority may be considered in any investment decisions.

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 5 of this act and Sections 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 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 5 of this act and Section 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 5 of this act and 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 as provided in subparagraph b of paragraph 4 of subsection A of Section 695.8 of Title 62 of the Oklahoma Statutes, 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~~ 5 of this act.

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; provided, no more than twenty percent (20%) of this allocation may be used for health care and other nonprofit-owned facility projects.~~

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 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 ~~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 Capital Corporation for implementation of the Quality Jobs Investment Program established pursuant to Section 30 of this act.~~ 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 pursuant to Section 5 of this act. ~~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 made by the Oklahoma Development Capital Corporation. The Authority may review on an annual basis the portfolio of investments of the Oklahoma Development Capital Corporation backed by the guarantee of the Authority.~~

SECTION 11. REPEALER Sections 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5086.1, 5086.2, 5086.3, 5086.4, 5086.5, 5086.6, 5086.7, 5086.8, 5086.9 and 5086.10), are hereby repealed.

SECTION 12. This act shall become effective July 1, 1994.

SECTION 13. 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.

44-2-2581 JY