SHORT TITLE: Economic development; relating to the Oklahoma Development Capital Corporation; restructuring Quality Jobs Investment Program and entity authorized to carry out program; repealer; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 991 By: Fisher

AS INTRODUCED

An Act relating to economic development; amending Sections 44, 26, 27, 28 and 30, Chapter 275, O.S.L. 1993 (74 O.S. Supp. 1993, Sections 5063.4i, 5086.1, 5086.2, 5086.3 and 5086.5), which relate to the Oklahoma Development Capital Corporation; modifying and conforming statutory references; modifying short title; restructuring Quality Jobs Investment Program and entity authorized to carry out program; deleting provisions which incorporate certain public corporation and provide for related stock, organizational group, board of directors and board meetings; requiring Program be administered by private business investment entity organized for such purpose; requiring entity meet certain criteria and providing for certification of certain documents; requiring business to assign certain portion of incentive payments only to extent capital receives certain support; deleting requirement that certain pledged funds be decreased by certain assignment; requiring establishment of certain procedures regarding use of certain guaranteed obligations and private capital and liquidation of company; deleting restriction on out-of-state investments; requiring employment of guaranteed capital to benefit state and approval of certain plan; 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 officers, conflict of interest, fiduciary responsibilities and other duties of board of directors of corporation; providing an effective date; and declaring an emergency.

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

SECTION 1. 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~~ 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 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 Capital ~~Corporation~~ Company. The Authority may review on an annual basis the portfolio of investments of the Oklahoma Development Capital ~~Corporation~~ Company backed by the guarantee of the Authority.

SECTION 2. 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 3. 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 Section 5086.3 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 4. 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 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 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 5. 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 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 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 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 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 6. 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 7. This act shall become effective July 1, 1994.

SECTION 8. 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.

44-2-1915 JY