

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 627

By: Hobson of the Senate

and

Benson of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture and public finance;
amending 2 O.S. 1991, Section 1767, as amended by
Section 1, Chapter 86, O.S.L. 1993 (2 O.S. Supp.
1994, Section 1767), which relates to agricultural
linked deposit program; restricting number of
renewals; adding criteria for allowance of
renewals; amending 62 O.S. 1991, Section 88.5,
Section 14, Chapter 277, O.S.L. 1994, as amended by
Section 25, Chapter 382, O.S.L. 1994 and 62 O.S.
1991, Section 89.7, as amended by Section 3,
Chapter 227, O.S.L. 1994 (62 O.S. Supp. 1994,
Sections 88.1B and 89.7), which relate to small
business linked deposit programs and reports by the
State Treasurer; restricting number of renewals;
adding criteria for allowance of renewals;
modifying amount that State Treasurer may invest in
linked deposit programs; modifying time by which
certain reports must be made; providing an
effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 1767, as amended by Section 1, Chapter 86, O.S.L. 1993 (2 O.S. Supp. 1994, Section 1767), is amended to read as follows:

Section 1767. A. The State Treasurer may accept or reject an agricultural linked deposit loan package or any portion thereof, based on the State Treasurer's evaluation of the eligible agricultural businesses included in the package, the amount of individual loans in the package, and the amount of the package. If the State Treasurer recommends rejection, the written recommendation shall include reasons for said rejection in a report to the Board. The Board shall forward a copy of the rejection notice to the lending institution and the borrower. The borrower may be allowed to bring ~~his~~ the application into compliance with the Board and the State Treasurer and resubmit the application. If the State Treasurer rejects the loan because sufficient funds are not available for a linked deposit, then the applications may be considered in the order received when funds are once again available subject to a review by the Board and the lending institution. In evaluating the eligible agricultural businesses, the State Treasurer shall consider the recommendation of the Board and the economic needs of the area where the business is located.

B. The State Treasurer may accept or reject an agricultural linked deposit loan package or any portion thereof, based on the agricultural business's debt-to-asset ratio. The State Treasurer shall have the authority to establish quarterly, based on the availability of funds, a minimum debt-to-asset ratio of not less than forty percent (40%), nor more than fifty-five percent (55%), required to qualify as an at-risk farm or ranch business.

C. Upon acceptance of the agricultural linked deposit loan package or any portion thereof, the State Treasurer shall notify the Board, the lending institution and the borrower. Upon acceptance, the State Treasurer may place certificates of deposit with the eligible lending institution at a rate below current market rates, as determined and calculated by the State Treasurer, or may invest in bonds, notes, debentures, or other obligations or securities issued by the federal farm credit bank with respect to the eligible lending institution at a rate below current market rates, as determined and calculated by the State Treasurer. When necessary, the State Treasurer may place certificates of deposit or may invest in such obligations or securities prior to acceptance of an agricultural linked deposit loan package.

D. The eligible lending institution shall enter into an agricultural linked deposit agreement with the State Treasurer, which shall include requirements necessary to implement the purposes of the Oklahoma Agricultural Linked Deposit Program. Such requirements shall include an agreement by the eligible lending institution to lend an amount equal to the agricultural linked deposit to eligible agricultural businesses at an interest rate that reflects a percentage rate reduction below the present borrowing rate applicable to each specific agricultural business in the accepted loan package that is equal to the percentage rate reduction below market rates at which the certificates of deposit that constitute the agricultural linked deposit were placed or at which the investments in bonds, notes, debentures, or other obligations or securities that constitute the agricultural linked deposit were made. Such requirements shall also reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of

deposit to be placed or the investment in bonds, notes, debentures, obligations, or securities to be made for any maturity considered appropriate by the State Treasurer not to exceed two (2) years and may be renewed for up to an additional three renewals not to exceed two (2) years each at the option of the State Treasurer. No renewals will be allowed unless the amount of principal has been reduced by a minimum of five percent (5%) and all interest paid to date from the time of the prior loan or renewal. Interest shall be paid at the times determined by the State Treasurer.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 88.5, is amended to read as follows:

Section 88.5 A. The State Treasurer and the Department of Commerce are hereby authorized to disseminate information and to provide small business linked deposit loan packages to the lending institutions eligible for participation under this act.

B. The small business linked deposit loan package shall be completed by the borrower before being forwarded to the lending institution for consideration. Any technical assistance in completing such loan package shall be provided by the State Treasurer.

C. An eligible lending institution that desires to receive a small business linked deposit shall accept and review applications for loans from eligible participants. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible participant. Loans under this act shall conform to the following conditions:

1. Maximum loan amounts under the Oklahoma Small Business Linked Deposit Act shall:

- a. not exceed One Million Dollars (\$1,000,000.00) for an eligible small business,
- b. not exceed Six Million Dollars (\$6,000,000.00) for an eligible industrial park or any public trust

authorized in accordance with Section 176 of Title 60 of the Oklahoma Statutes engaged in industrial development as determined by the Oklahoma Linked Deposit Review Board. Such public trusts are limited to fifteen percent (15%) of the total available funds and a nonrenewable term not to exceed six (6) months unless their purpose is to make package passthrough loans to other private recipients for industrial development purposes. Loans made by an eligible trust cannot exceed the interest rate established by this act. Any recipient of a loan through an eligible trust must meet the criteria of this act to receive a small business linked deposit loan;

2. An eligible participant shall certify on the loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in accordance with the purpose of this section;

3. Only one linked deposit loan shall be made and be outstanding at any time to any eligible participant; provided that the linked deposit loan may be refinanced;

4. No linked deposit loan shall be approved for any otherwise eligible participant when fifty percent (50%) or more of the interest in or control of such otherwise eligible participant is owned directly or indirectly by a person who owns directly or indirectly fifty percent (50%) or more of or controls another participating eligible participant;

5. No loan shall be made to any officer or director of the lending institution making the loan or to any entity in which any such officer or director maintains a controlling interest;

6. No loan shall be made to any employee of the State Treasurer's office or members of the Board or to any entity in which any such officer or director maintains a controlling interest;

7. The criteria for the amount of loans used for refinance shall be established by the Oklahoma Linked Deposit Review Board to reflect legislative intent to tighten previous criteria on refinancing;

8. The criteria for the amount of loans per job ratio shall be established by the Oklahoma Linked Deposit Review Board to reflect legislative intent to maximize the program in terms of the jobs created or saved;

9. Whoever knowingly makes a false statement concerning a linked deposit loan application shall be prohibited from entering into the linked deposit loan program; and

10. Linked deposits may be made for any maturity considered appropriate by the State Treasurer not to exceed two (2) years and may be renewed for up to an additional three renewals not to exceed two (2) years each at the discretion of the State Treasurer with the approval of the lending institution. No renewals will be allowed unless the amount of principal has been reduced by a minimum of five percent (5%) and all interest paid to date from the time of the prior loan or renewal. However, such loans made to eligible participants where the loan is to be used within an enterprise zone may be made for the maturity date of three (3) years and have another three (3) years of renewal. Loans made to be used within Priority Enterprise Zones may be made with a maturity date of five (5) years and have another three (3) years of renewal. Interest shall be paid at the times determined by the State Treasurer. The State Treasurer may place a small business linked deposit with an eligible lending institution or decline to do so based on the cash flow needs of the state, the security of state funds, investment needs of the state and the ratio of state funds deposited to jobs which would be sustained or created.

D. In considering which eligible participants to include in the small business linked deposit loan package for reduced rate loans,

the eligible lending institution shall give priority to the economic needs of the area in which the business is located and other factors it considers appropriate to determine the relative financial need of the business including those criteria set forth in the Community Reinvestment Act of the United States. Location in an enterprise zone shall be evidence of the economic needs of the area.

E. The eligible lending institution shall forward to the State Treasurer a small business linked deposit loan package in the form and manner prescribed and approved by the State Treasurer. The package shall include information regarding the amount of the loan requested by each eligible participant, the number of jobs to be created or sustained, an estimate of the number of zone residents to be employed in such jobs where the loan is to be used in an enterprise zone and such other information regarding each business the State Treasurer and the Board requires. The institution shall certify that each applicant is an eligible participant, and shall, for each business, certify the present borrowing rate applicable to each specific eligible small business.

F. Upon receipt of a completed small business linked deposit loan package, the State Treasurer shall forward the loan package to the Board, Oklahoma Tax Commission and Oklahoma Employment Security Commission. The Board shall review the small business linked deposit loan package to determine if said package is qualified under this act. Within ten (10) days of receipt of the loan package, the Oklahoma Tax Commission and the Oklahoma Employment Security Commission shall determine and certify with the Board whether or not the applicant is in good standing. The Board shall make a recommendation concerning the package within ten (10) business days, after receipt of the responses from the Oklahoma Tax Commission and the Oklahoma Employment Security Commission. No applicant will be approved without certification of good standing with the Oklahoma Tax Commission and Oklahoma Employment Security Commission. The

Board shall return the package to the State Treasurer with a written recommendation of approval or rejection. If the Board recommends rejection, the written recommendation shall include reasons for said rejection. The Board shall forward a copy of its rejection notice to the lending institution and the borrower. The State Treasurer shall keep a chronological list of applications forwarded by the Board for approval or rejection.

SECTION 3. AMENDATORY Section 14, Chapter 277, O.S.L. 1994, as amended by Section 25, Chapter 382, O.S.L. 1994 (62 O.S. Supp. 1994, Section 88.1B), is amended to read as follows:

Section 88.1B A. The amount that the State Treasurer may invest in all linked deposit programs authorized by law shall not exceed ~~a total~~ the lesser of Two Hundred Million Dollars (\$200,000,000.00) or fifteen percent (15%) of all monies available to the State Treasurer for investment as calculated by taking the average of the quarter-end amount for the previous four (4) quarters.

B. The State Treasurer shall on a quarterly basis review the percentage of total investable state funds invested in all linked deposit programs created by law to determine compliance with subsection A of this section.

C. If the State Treasurer determines that more than ~~fifteen percent (15%) of the total investable state funds are~~ the amount allowable pursuant to subsection A of this section is invested in all linked deposit programs created by law, the State Treasurer shall suspend any renewal or any initiation of new linked deposit program investments until ~~such~~ the time that the State Treasurer determines the investment percentage limitation established by this section has been met and except as provided by Section ~~24~~ 88.1A of this ~~act~~ title.

SECTION 4. AMENDATORY 62 O.S. 1991, Section 89.7, as amended by Section 3, Chapter 227, O.S.L. 1994 (62 O.S. Supp. 1994, Section 89.7), is amended to read as follows:

Section 89.7 A. The State Treasurer shall prepare monthly and annual investment performance reports of the State Treasurer's Office in the form and manner required by the Cash Management and Investment Oversight Commission after consultation with the State Treasurer which summarize recent market conditions, economic developments and anticipated investment conditions and the investment plan performance, including portfolio diversification and rates of return measured against the investment plan of the State Treasury. The annual investment performance report shall be submitted to the Commission and shall be made within thirty (30) calendar days after the end of the fiscal year. The monthly investment performance reports shall be submitted to the Executive Review Committee and shall be made within ~~fifteen (15)~~ thirty (30) days after the end of the applicable month. The investment performance reports shall specify the investment strategies employed in the most recent reporting period and describe the investment portfolio of the state in terms of:

1. Securities;
2. Maturities;
3. Fund type;
4. Financial institutions from which securities were purchased, including the amounts and the city and state of location;
5. Investment return compared to budgetary expectations;
6. Average yield; and
7. Average life of the portfolio.

The investment performance reports shall also indicate any areas of concern which the State Treasurer has concerning the basic investment strategies being employed. The investment performance reports shall contain:

- a. combined and individual rates of return and a list of all losses by category of investment, over periods of time;
- b. the rate of return on deposits and all fees and expenses charged as to all depository financial institutions of the State Treasury and a specific review of the adequacy of the collateralization;
- c. any other information that the State Treasurer may include; and
- d. such other information that the Cash Management and Investment Oversight Commission created by Section 71.1 of this title may request and that the State Treasurer agrees to include in the investment performance reports.

B. To the extent that the State Treasurer should have reason to know, the State Treasurer shall also include in the investment performance reports a listing of all payments, fees, commissions, or other compensation received by any person, including but not limited to individuals, financial institutions, or investment companies or corporations, which have an investment agreement, contract, or other arrangement with the State Treasurer, or who receive any compensation as a result of a transaction involving the investment of state monies or funds or the purchase, sale, or trade of securities or bonds involving the Office of the State Treasurer. Said listings shall also include the social security or federal identification number of any person, including but not limited to individuals, financial institutions, or investment companies or corporations, receiving payments, fees, commissions, or other compensation.

C. The annual investment performance report shall be written in simple and easily understood language containing:

- a. an analysis of the written investment plans developed by the Treasurer as required by law;
- b. a quantitative analysis of the performance of all depository financial institutions approved by the State Treasurer, with regard to monies deposited;
- c. the result of the analyses prepared pursuant to subparagraphs a and b of this paragraph compared with similar data for other states;
- d. recommendations on administrative and legislative changes which are necessary to improve the performance of the State Treasury in accordance with current standards for large public fund portfolio management; and
- e. a listing by object code of the expenses of the State Treasury as audited by the independent auditor provided by Section 89.10 of this title.

D. The State Treasurer shall distribute the investment performance reports to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the State Auditor and Inspector, the Attorney General, and members of the Cash Management and Investment Oversight Commission. Upon request, the State Treasurer shall make the annual investment performance report available to the members of the Legislature and the general public. The annual investment performance report shall also include an investment plan for the ensuing fiscal year.

E. The State Treasurer shall require all employees in the State Treasury to sign an anti-collusion affidavit. Execution of a false affidavit shall make such employees subject to disciplinary action, including but not limited to termination, criminal prosecution or both.

F. The State Treasurer shall require an anti-collusion affidavit from brokers or other persons offering investment services

to the State Treasury. The State Treasurer shall be prohibited from employing or doing business with any brokers or persons offering investment services to the State Treasury who have not executed such an affidavit.

G. The Cash Management and Investment Oversight Commission shall certify that the State Treasurer has delivered to the Commission the monthly and annual investment performance reports ~~required by Section 89.7 of this title~~ and the annual financial report required by this section. If the Commission determines that these reports have not been delivered by the State Treasurer as required by law, the Commission shall notify in writing the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Attorney General, and the State Auditor and Inspector.

SECTION 5. This act shall become effective July 1, 1995.

SECTION 6. 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.

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