

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3315

By: Blackburn

COMMITTEE SUBSTITUTE

An Act relating to economic development; enacting the Community Development Corporation Finance Act; making legislative findings; authorizing certain nonprofit corporation to obtain certification; requiring Director of Oklahoma Department of Commerce to make certification; imposing requirements with respect to qualifications for certain entity; imposing requirements with respect to board of directors; imposing requirements with respect to qualifications of staff employed; enumerating powers of the Community Development Corporation Finance Authority; providing for status of Community Development Corporation Finance Authority as instrumentality of state government; providing for applicability of Oklahoma Open Meeting Act, Oklahoma Open Records Act, State Travel Reimbursement Act, Central Purchasing Act, Governmental Tort Claims Act, and the Oklahoma Administrative Procedures Act; providing for inapplicability of State Personnel Act and Oklahoma Sunset Review Act; creating Community Development Corporation Finance Fund; prescribing procedures for use of fund; authorizing Community Development Corporation Finance Authority to provide programs for certain purposes; providing for benefits available for certain purposes; specifying certain municipalities eligible for assistance; specifying certain areas within municipalities eligible for assistance; prescribing procedures for application for assistance; providing for priority of applications based upon certain conditions; prescribing procedures for evaluation of applications; providing for deposit of funds with certain financial institutions; requiring annual report; providing for public purpose related to expenditure of funds; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3001 of Title 62, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Community Development Corporation Finance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that conditions in certain urban areas of the state experience a decline in residential populations, a decline in business activity with a concomitant loss of property values, a decline in community activity, reduced tax revenue for local government expenditures for essential services, decreasing quality of services and other effects resulting from a disinvestment in these areas. In order to promote the reinvestment of both private and public funds, the Legislature hereby establishes a method by which locally supported efforts can be enhanced pursuant to involvement at the state level in order to improve conditions in urban areas qualifying for the benefits specified by this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3003 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit corporation, organized under the laws of the State of Oklahoma, may qualify to become the Community Development Corporation Finance Authority with such powers, rights, duties and responsibilities as provided by this act.

B. The Oklahoma Department of Commerce shall be responsible for determining if a nonprofit corporation is qualified to become the Community Development Corporation Finance Authority and to exercise the powers, rights, duties and responsibilities as provided by this act. Upon certification by the Director of the Oklahoma Department of Commerce of an eligible nonprofit corporation as the Community Development Corporation Finance Authority, no other nonprofit corporation or other entity may apply for the certification.

C. In order to be eligible for the certification authorized by subsection B of this section, a nonprofit corporation shall:

1. Be organized pursuant to the Oklahoma General Corporation Act;
2. Be an entity with perpetual duration, reflected in the articles of incorporation;
3. Have a board of directors composed of a minimum of eight (8) persons who shall have the following qualifications:
 - a. one member who is a certified economic development specialist pursuant to qualifications established by the National Council for Urban Economic Development,
 - b. one member who is a member of the board of directors of a national-chartered or state-chartered financial institution,
 - c. one member who is a certified public accountant, with significant experience in federal income tax consequences of commercial transactions conducted by legally constituted business entities,
 - d. one member who is a licensed attorney with significant experience in traditional asset based lending techniques and significant experience in the use of governmentally issued obligations secured by revenue derived from the activity of a private business entity whether or not the obligations are secured by the use of some form of tax revenue,
 - e. a person holding a designation as a certified regional or city planner pursuant to a recognized national association,
 - f. a person experienced in the creation, management or operation of historic preservation districts,
 - g. a person experienced in available funds for the establishment and management of community housing programs, and
 - h. a person experienced in community action agency functions and programs; and
4. Employ a staff of persons experienced in regional and city planning, local economic development, historic preservation, community action programs, low to moderate income housing programs

and financing mechanisms, central business district development and redevelopment and such other areas of expertise as the Authority may require in order to carry out the powers and duties specified in this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3004 of Title 62, unless there is created a duplication in numbering, reads as follows:

In addition to all of the powers authorized to be exercised by a nonprofit corporation pursuant to the Oklahoma General Corporation Act, the Community Development Corporation Finance Authority shall have the following powers:

1. To adopt, amend and repeal rules and regulations, policies and procedures for the regulation of its affairs and the conduct of its business;

2. To sue and be sued in its own name;

3. To have an official seal and power to alter that seal at will;

4. To maintain an office at such place or places within this state as it may designate;

5. To adopt, amend and repeal bylaws and rules and regulations, not inconsistent with the provisions of this act, to carry into effect the powers and purposes of the Authority and the conduct of its business;

6. To make and execute contracts with any individual, corporation, whether profit or nonprofit, association or any other entity and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this act;

7. To employ underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee, paying agent or in any fiduciary capacity in connection with any program, indenture or general resolution of the Authority, or any other experts and to determine their qualifications, duties and compensation subject to the provisions of this act for advice and oversight of the State Bond Advisor; provided, however, the Authority shall not employ or contract with

any person, partnership, corporation, trust or other entity for underwriting services for issuance of bonded indebtedness if that entity has served as financial advisor to the Authority concerning the consideration of that issuance.

When engaging the services of underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee, paying agent or in any fiduciary capacity in connection with any program, indenture or general resolution of the Authority, or any other experts, the board shall be governed by the provisions of subsection C of Section 695.7 of Title 62 of the Oklahoma Statutes except when engaging such services in connection with a program whose purpose is to provide financing for a single, private entity which has previously selected providers of any such services prior to making application to the Authority, provided:

- a. such financing for the program shall not be backed by the Credit Enhancement Reserve Fund, and
- b. fees proposed for such services for the program shall fall within a range of fees as determined every six (6) months by the State Bond Advisor, based on industry studies and on fees for such services which have been negotiated and approved by the State Bond Advisor;

8. To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable;

9. To borrow money and to issue bonds, whether or not the interest thereon is to be includable in the gross income of the recipients thereof for federal income tax purposes, including, without limitation, to provide on a pooled or consolidated basis financing for the purposes and projects herein provided and to provide for the security and sources of payments therefor;

10. To receive and accept aid or contributions from any source of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this act subject to the conditions upon which the grants and contributions

are made, including, but not limited to, gifts or grants from any department, agency or instrumentality of the United States or of the state for any purpose consistent with this act;

11. To obtain from any department or agency of the United States of America or nongovernmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or of, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds issued by the Authority, or on any municipal securities of political subdivisions purchased or held by the Authority, pursuant to this act; and, notwithstanding any other provisions of this act, to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the Authority to perform and fulfill the terms of any agreement made with the owners of the bonds of the Authority;

12. To sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property or any interest therein, wherever situated;

13. To provide financing assistance for the purposes and projects herein provided;

14. To acquire, purchase, hold, store, advertise, market, sell, trade, barter, exchange, distribute, transport, process, utilize and contract in all manner with respect thereto and for commodities, products and services, and real or personal property or any interest therein and to contract for, issue and utilize letters of credit and other credit facilities and incur indebtedness and to arrange, form, make, guarantee, issue, remit, receive, receipt, process and collect payments and equivalents, howsoever nominated, in connection with or for purposes of any of the foregoing and for the purpose of executing and fulfilling the purposes of the Authority;

15. To acquire, reacquire, construct, reconstruct, extend, rent, lease, purchase, use, loan, borrow, install, equip, maintain, operate, renovate, refurbish, enlarge, remodel, convey, sell, at public or private sale, encumber, alleviate, transfer,

exchange, dispose of and/or resell, any property, real, personal or mixed, improvements, buildings, equipment, chattels, furnishings, fixtures, trade fixtures, and any and all other facilities and/or property of whatever nature, including any and all rights to or therein for use by corporations, individuals, cooperatives, partnerships, associations or proprietary companies for any of or for the purpose of executing and/or fulfilling the purposes of the Authority, and to plan, establish, develop, construct, enlarge, improve, extend, maintain, equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer property, buildings, improvements and facilities of every nature, which may be useful in pursuing, promoting, executing and/or fulfilling the aforementioned purposes;

16. To the extent permitted under its contract with the owners of bonds, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security or any other term of any contract, mortgage, contract or agreement of any kind to which the Authority is a party; 17. To purchase its own bonds at such price or prices as the Authority shall determine, subject to any agreement with the owners of bonds;

18. To enter into financial documents with others for the purpose of receiving revenues to pay the bonds authorized by this act; to lease, sell or otherwise dispose of any or all of its projects to others for such revenues and upon such terms and conditions as the Authority may deem advisable, and to grant options to renew any financing agreement with respect to project and to grant options to buy any project at such price or prices as the Authority deems desirable;

19. To lend money to the state or political subdivisions through the purchase by the Authority of obligations of the state or political subdivisions;

20. To collect fees and charges in connection with its loans, commitments and servicing, including, but not limited to, reimbursement of costs of financing as the Authority shall

determine to be reasonable and as shall be approved by the Authority;

21. To provide services, technical assistance and advice to this state and political subdivisions and to enter into contracts with this state and political subdivisions to provide such services. The State of Oklahoma and its political subdivisions are hereby authorized to enter into contracts with the Authority for such services and to pay for such services as may be provided them;

22. To contract, cooperate or join with any one or more other governments or public agencies, or with the state, any political subdivisions of this state or the United States, to perform any administrative service, activity or undertaking which any such contracting party is authorized by law to perform, including the issuance of bonds;

23. To lend money or otherwise extend credit to any person and exercise all powers of a lender or creditor;

24. To invest any funds available to the Authority, whether or not from the proceeds of bonds, in such securities or pursuant to such agreements or other arrangements as the Authority shall determine, subject to any agreements with bond owners or other creditors of the Authority;

25. To purchase, trade or sell foreign or domestic currencies or the right to acquire such currency in the future; and

26. To exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3005 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Community Development Corporation Finance Authority shall be constituted as an instrumentality of the state and shall be subject to the provisions of:

1. The Oklahoma Open Meeting Act;
2. The Oklahoma Open Records Act;
3. The State Travel Reimbursement Act;

4. The Central Purchasing Act;
5. The Governmental Tort Claims Act; and
6. The Oklahoma Administrative Procedures Act.

B. The Community Development Corporation Finance Authority shall not be subject to:

1. The State Personnel Act; or
2. The Oklahoma Sunset Review Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3006 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Community Development Corporation Finance Authority to be designated the "Community Development Corporation Finance Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Community Development Corporation Finance Authority as authorized by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Community Development Corporation Finance Authority for the implementation of the programs authorized by this act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3007 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Community Development Corporation Finance Authority shall be authorized to exercise its powers and to expend the funds available to it pursuant to Section 4 of this act and other provisions of law in order to establish programs for the development, redevelopment, restoration, rehabilitation, preservation, improvement, repair and remediation of areas located within eligible communities.

B. The Community Development Corporation Finance Authority may exercise its powers in order to benefit:

1. Local community development and redevelopment efforts;

2. Local business district development and redevelopment efforts;

3. Programs related to the establishment of improvements for the benefit of a local community including, but not limited to, parks, playgrounds, community centers, recreational facilities, swimming pools or other facilities conferring general benefits upon the residents of a community;

4. Urban housing programs, whether pursuant to assistance available from the federal government or not; and

5. Any other program or project as authorized pursuant to a two-thirds (2/3) vote of the members of the board of directors of the Community Development Corporation Finance Authority.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3008 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Community Development Corporation Finance Authority may exercise its powers and expend funds available to it in order to provide financing or other assistance to:

1. An incorporated city or town with a population, according to the latest Federal Decennial Census, or the latest estimate of population available from the United States Bureau of the Census of seven thousand (7,000) persons or more; and

2. Areas within an incorporated city or town:

- a. designated as enterprise zones pursuant to Section 690.2 of Title 62 of the Oklahoma Statutes,
- b. in need of financial or technical assistance for the creation of infrastructure,
- c. in need of financial or technical assistance for the development or redevelopment of residential dwellings,
- d. in need of financial or technical assistance for historic preservation,
- e. in need of financial or technical assistance with programs related to community action agencies,

- f. in need of financial or technical assistance with central business district revitalization programs, or
- g. in need of such other assistance as may be authorized by law.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3009 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. An eligible applicant may request assistance from the Community Development Corporation Finance Authority in such manner as may be prescribed by the Authority.

B. The Authority shall give precedence to applications submitted on behalf of areas within an incorporated city or town having relatively greater need based upon an evaluation of:

1. Per capita income;
2. Residential dwelling unit vacancy;
3. Residential dwelling unit distressed conditions;
4. Violent crime rate;
5. Property crime rate;
6. Blighted conditions;
7. Unoccupied commercial real property zoned for business use according to the municipal zoning regulations; or
8. Such other factors or conditions as approved by the Authority.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3010 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Community Development Corporation Finance Authority shall evaluate the applications for assistance received pursuant to Section 9 of this act and shall evaluate the applications received within ninety (90) days from the date the application for assistance is received.

B. The Community Development Corporation Finance Authority shall communicate its decision to each applicant within thirty

(30) days from the expiration of the period prescribed by subsection A of this section.

C. Decisions of the Community Development Corporation Finance Authority shall be final, but shall not be deemed or treated as a final order for purposes of the Oklahoma Administrative Procedures Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3011 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Community Development Corporation Finance Authority shall deposit funds utilized pursuant to this act in a regulated financial institution. Payments by the Community Development Corporation Finance Authority shall be made to eligible entities qualifying for assistance or benefits in the form of a negotiable instrument of payment drawn on the account maintained at the financial institution.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3012 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Community Development Corporation Finance Authority shall prepare an annual report regarding its functions, activities, programs, including a complete financial report that specifically identifies all public funds, whether federal, state or local, utilized in the programs or areas qualifying and receiving financial assistance or benefits pursuant to the provisions of this act.

B. The Community Development Corporation Finance Authority shall transmit a copy of the report required by this section to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Governor and the Director of the Oklahoma Department of Commerce not later than September 30 each year.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3013 of Title 62,

unless there is created a duplication in numbering, reads as follows:

The expenditures from the Community Development Corporation Finance Authority Revolving Fund and other expenditures governed by this act, if made in accordance with the requirements of this act, shall be construed as an expenditure of public funds in furtherance of governmental functions and for the purpose of conferring general and uniform benefits resulting from the expenditures upon the residents and other legal entities located in areas subject to the jurisdiction of eligible entities receiving assistance or benefits from the Community Development Corporation Finance Authority.

SECTION 14. This act shall become effective July 1, 1998.

SECTION 15. 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.

46-2-9828

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