

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1442

By: Kerr and Shurden of the  
Senate

and

Covey of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public finance, revenue and taxation and state government; creating the Rural Economic Development Loan Act; providing short title; defining terms; creating the Rural Economic Development Loan Program; providing for administration of Program; specifying certain duties of State Treasurer; creating Oklahoma Rural Economic Development Loan Program Review Board; providing for membership, powers and duties and staffing thereof; providing that holding of other office or employment not prohibited due to service on Board; specifying procedures for rural economic development loans; specifying certain duties of financial institutions; specifying conditions under which loans may be made or renewed; providing for application for such loans; providing procedures in cases of approval or rejection; conditioning loans upon availability of certain funds; requiring certain notification; requiring reduction of certain interest rates; providing for payment of certain costs; requiring certification of compliance; providing procedures for deposit of repayment proceeds; providing that neither state nor State Treasurer liable for certain payments; requiring certain rules; creating Rural Economic Development Loan Revolving Fund; providing for deposits thereto and expenditures therefrom; prohibiting counting of certain employment in determination of gross payroll for certain purposes; amending 68 O.S. 2001, Section 2370, which relates to income taxes; allowing certain income tax deduction; limiting amount thereof and prohibiting taking of such deduction during certain years; amending 74 O.S. 2001, Section 5078, which relates to business incubators; modifying exemption from state income tax; providing for codification; and providing an effective date.

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 90.1 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 "Rural Economic Development Loan Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in the Rural Economic Development Loan Act:

1. "Financial institution" means any office or branch of a bank, savings bank, savings association, building and loan association, savings and loan association, credit union or nonprofit lender exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of the United States located in the State of Oklahoma;

2. "Participating financial institution" means a financial institution which pledges at least Three Million Dollars (\$3,000,000.00) but not to exceed Ten Million Dollars (\$10,000,000.00) to the Rural Economic Development Loan Revolving Fund;

3. "Qualified economic development project" means:

- a. the development, construction, restoration, or replacement of a physical facility located or to be located in a rural area of this state, which has been initiated by a participating financial institution which has been certified by the Rural Economic Development Loan Program Review Board pursuant to the provisions of paragraph 3 of subsection B of Section 4 of this act, and
- b. the commencement or expansion of economic activities that result in or that will, within three (3) years of the commencement of such activities, result in the

employment of five (5) or more full-time-equivalent employees at a location in a rural area of this state in positions that did not exist prior to the commencement of such activities and which has been certified by the Rural Economic Development Loan Program Review Board pursuant to the provisions of paragraph 3 of subsection B of Section 4 of this act; and

4. "Rural area" means an area designated as such by the Office of Rural Development of the United States Department of Agriculture.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.3 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created the Rural Economic Development Loan Program. The State Treasurer shall administer the Program, under which reduced rate loans may be made by participating financial institutions, after approval by the Rural Economic Development Loan Program Review Board, to finance qualified economic development projects from the Rural Economic Development Loan Revolving Fund created in Section 8 of this act. The State Treasurer shall promulgate rules and take such other actions as may be necessary to implement the Program and monitor compliance of participating financial institutions and loan applicants and recipients.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.4 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Rural Economic Development Loan Program Review Board. The Board shall consist of seven (7) members as follows:

1. The State Auditor and Inspector or designee;
2. The Lieutenant Governor or designee;
3. The State Treasurer or designee;

4. The State Banking Commissioner or designee;

5. The Director of the Oklahoma Department of Commerce or designee;

6. The President of the State Board of Agriculture or designee; and

7. The Chair of the Oklahoma Tax Commission or designee.

B. The Board shall have the following powers and duties:

1. To approve qualified economic development projects and eligibility for loans from the Rural Economic Development Loan Revolving Fund pursuant to applications submitted by participating financial institutions;

2. To review such applications and make a recommendation for approval or rejection of each loan. The Board may approve a loan in an amount less than the amount requested in the loan application submitted by a participating financial institution;

3. To certify each year the amount of annual payroll directly attributable to new jobs that are directly created as a result of each loan made under the Rural Economic Development Loan Act;

4. To develop criteria for prioritizing applications for loans and loan packages under the Rural Economic Development Loan Act. In prioritizing such applications, consideration shall be given to the economic needs of the area in which the loan recipient is located and other factors the Board considers appropriate to determine the relative financial need of the recipient, including those criteria set forth in the Community Reinvestment Act of the United States. Priority shall be given to loans which will result in job creation in areas of this state in greatest economic need;

5. To adopt and administer a reporting plan whereby the economic impact of rural economic development loans is reviewed and analyzed on an annual basis;

6. To annually prepare a report summarizing these findings. The report shall list separately each loan, with name, address, and

type of business by Standard Industrial Classification or North American Industrial Classification System, amount, estimated jobs saved or created, lending institution and locations by county. The report shall be filed with the State Treasurer, the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Chairs of the Economic Development Committees of the Senate and House of Representatives;

7. To determine an amount to be retained by or paid to an entity for arranging a rural economic development loan or a package of such loans pursuant to the provisions of subsection D of Section 6 of this act; and

8. To take such other actions as may be necessary as set forth in the Rural Economic Development Loan Act.

C. The Office of the State Treasurer shall provide staff assistance to the Board.

D. Notwithstanding any other provision of law, the holding of other office or employment under the government of this state shall not be prohibited due to service on the Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.5 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. A participating financial institution that desires to make a rural economic development loan shall accept and review applications for loans in connection with qualified economic development projects. A package of more than one rural economic development loan may be developed by a development company certified by the U.S. Small Business Administration or a political subdivision of this state or an agency thereof, and such entity may submit an application for one or more loans. The financial institution shall apply all usual lending standards and shall exercise due diligence to determine the creditworthiness of each applicant and to determine

if the loan should be granted. Loans made under the Rural Economic Development Loan Act shall conform to the following conditions:

1. The maximum amount of loans under the Rural Economic Development Loan Act in connection with a particular qualified economic development project shall be determined by need in the rural area in which the project is located and the number of jobs created. The Oklahoma Rural Economic Development Loan Program Review Board shall have final decision-making authority as to the maximum amount of each loan;
2. The applicant shall certify on the loan application that the loan will be used exclusively in connection with the qualified economic development project in accordance with the purpose of the Rural Economic Development Loan Act;
3. No loan shall be approved for any otherwise eligible recipient when fifty percent (50%) or more of the interest in or control of such otherwise eligible recipient is owned directly or indirectly by a person who owns directly or indirectly fifty percent (50%) or more of or controls another participating recipient;
4. No loan shall be made to any officer or director of the financial institution making the loan or to any entity in which any such officer or director maintains a controlling interest;
5. No loan shall be made to any employee of the State Treasurer's office or members of the Oklahoma Rural Economic Development Loan Program Review Board or to any entity in which any such employee or member maintains a controlling interest;
6. Whoever knowingly makes a false statement concerning a rural economic development loan application shall be prohibited from participating in the Rural Economic Development Loan Program; and
7. Rural economic development loans may be renewed if the amount of principal has been reduced by a minimum of five percent (5%) per year and all interest has been paid from the time of the original loan.

B. The participating financial institution shall forward to the State Treasurer a rural economic development loan application in the form and manner prescribed and approved by the State Treasurer. The application shall include information regarding the amount of the loan requested by each applicant, the number of jobs to be created, and such other information the State Treasurer and the Board require.

C. Upon receipt of a completed rural economic development loan application, the State Treasurer shall forward the loan application to the Board, the Oklahoma Tax Commission, and the Oklahoma Employment Security Commission. The Board shall review the loan package to determine if the loan requested meets the requirements set forth under the Rural Economic Development Loan 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 application at the next regularly scheduled Board meeting or at a special Board meeting, 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 application to the State Treasurer with a written recommendation of approval or rejection. If the Board recommends rejection, the written recommendation shall include reasons therefor. The Board shall forward a copy of its rejection notice to the financial institution and the applicant. The State Treasurer shall keep a chronological list of applications forwarded by the Board for approval or rejection. Rejected applications may be resubmitted after reasons for rejection have been addressed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.6 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Loans made pursuant to applications approved by the Oklahoma Rural Economic Development Loan Program Review Board shall be subject to the availability of funds pledged to the Rural Economic Development Loan Revolving Fund, and if a loan is not funded for such reason, it shall be funded in the order of the priority given each loan application by the Board.

B. Upon acceptance of the loan or any portion thereof, the State Treasurer shall notify the Board, the participating financial institution and the applicant. The participating financial institution shall fund the loan to the approved applicant to the extent of its unencumbered pledge to the Rural Economic Development Loan Revolving Fund, not to exceed the amount of the loan accepted. If the amount of the participating financial institution's unencumbered pledge is less than the amount of the loan as accepted, the State Treasurer shall notify all other participating financial institutions with an unencumbered pledge to the fund and shall require each such institution to transfer an amount to the Rural Economic Development Loan Revolving Fund. Such amount shall be equal to the amount of the remainder of the loan multiplied by the percentage of the institution's unencumbered pledge of all unencumbered pledges. The State Treasurer shall transfer such amounts to the participating financial institution making the loan.

C. The percentage rate of the loan shall be reduced compared to the rate imposed with respect to other loans made by the financial institution to similar recipients for similar purposes in an amount determined by the financial institution making the loan.

D. The State Treasurer may retain in the Rural Economic Development Loan Fund an amount not to exceed two percent (2%) of the total amount of a loan. Amounts retained pursuant to the

provisions of this subsection may be expended by the State Treasurer for costs associated with administration of this act and may be paid by the State Treasurer to a development company certified by the U.S. Small Business Administration or a political subdivision of this state or agency thereof for costs associated with developing a loan package if all loans in the package are approved pursuant to the provisions of this act.

E. A certification of compliance with this section in the form and manner as prescribed by the State Treasurer shall be required of the participating financial institution.

F. The participating financial institution making the loan shall, within three (3) business days of receipt, forward all payments received for repayment of the loan to the State Treasurer for immediate deposit to the Rural Economic Development Loan Revolving Fund, until the amount deposited is equal to the amount transferred by other participating financial institutions in connection with the loan together with interest at the rate applied to the loan. The State Treasurer shall forward such payments to such other participating financial institutions in proportion to the amounts transferred in connection with the loan. Remaining payments received for repayment of the loan shall be retained by the participating financial institution making the loan.

G. Neither the State of Oklahoma nor the State Treasurer shall be liable to any participating financial institution in any manner for payment of the principal or interest on a rural economic development loan.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.7 of Title 62, unless there is created a duplication in numbering, reads as follows:

The State Treasurer, in conjunction with the State Banking Commissioner, shall promulgate rules and prescribe forms to implement the provisions of the Rural Economic Development Loan Act,

which shall include, but not be limited to, those necessary to effect contractual arrangements between participating financial institutions pursuant to the making and collection of loans pursuant to the provisions of subsection B of Section 6 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.8 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 State Treasurer to be designated the "Rural Economic Development Loan Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Treasurer as provided in the Rural Economic Development Loan Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Treasurer for the purpose of implementing the Rural Economic Development Loan Act. Expenditures from the 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 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90.9 of Title 62, unless there is created a duplication in numbering, reads as follows:

No employment created pursuant to the provisions of this act shall be counted in a determination of "gross payroll" pursuant to the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the Former Military Facilities Development Act or the Small Employer Quality Jobs Incentive Act.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 2370, is amended to read as follows:

Section 2370. A. For taxable years beginning after December 31, 1989, for the privilege of doing business within this state, every state banking association, national banking association and

credit union organized under the laws of this state, located or doing business within the limits of the State of Oklahoma shall annually pay to this state a privilege tax at the rate of six percent (6%) of the amount of the taxable income as provided in this section.

B. 1. The privilege tax levied by this section shall be in addition to the franchise tax levied in Article 12 of this title and in lieu of the tax levied by Section 2355 of this title and in lieu of all taxes levied by the State of Oklahoma, or any subdivision thereof, upon the shares of stock or personal property of any banking association or credit union subject to taxation under this section.

2. Nothing in this section shall be construed to exempt the real property of any banking associations or credit unions from taxation to the same extent, according to its value, as other real property is taxed. Nothing herein shall be construed to exempt an association from payment of any fee or tax authorized or levied pursuant to the banking laws.

3. Personal property which is subject to a lease agreement between a bank or credit union, as lessor, and a nonbanking business entity or individual, as lessee, is not exempt from personal property ad valorem taxation. Provided, further, that it shall be the duty of the lessee of such personal property to return sworn lists or schedules of their taxable property within each county to the county assessor of such county as provided in Sections 2433 and 2434 of this title.

C. Any tax levied under this section shall accrue on the last day of the taxable year and be payable as provided in Section 2375 of this title. The accrual of such tax for the first taxable year to which this act applies, shall apply notwithstanding the prior accrual of a tax in the same taxable year based upon the net income of the next preceding taxable year; provided, however, any

additional deduction enuring to the benefit of the taxpayer shall be deducted in accordance with the optional transitional deduction procedures in Section 2354 of this title.

D. The basis of the tax shall be United States taxable income as defined in paragraph 10 of Section 2353 of this title and any adjustments thereto under the provisions of Section 2358 of this title with the following adjustments:

1. There shall be deducted all interest income on obligations of the United States government and agencies thereof not otherwise exempted and all interest income on obligations of the State of Oklahoma or political subdivisions thereof, including public trust authorities, not otherwise exempted under the laws of this state; and

2. Expense deductions claimed in arriving at taxable income under paragraph 10 of Section 2353 of this title shall be reduced by an amount equal to fifty percent (50%) of excluded interest income on obligations of the United States government or agencies thereof and obligations of the State of Oklahoma or political subdivisions thereof.

E. There shall be allowed a credit against the tax levied in subsection A of this section in an amount equal to the amount of taxable income received by a participating financial institution as defined in Section 2 of this act pursuant to a loan made under the Rural Economic Development Loan Act. Such credit shall be limited each year to five percent (5%) of the amount of annual payroll certified by the Oklahoma Rural Economic Development Loan Program Review Board pursuant to the provisions of paragraph 3 of subsection B of Section 4 of this act with respect to the loan made by the participating financial institution and may be claimed for any number of years necessary until the amount of total credits claimed is equal to the total amount of taxable income received by the participating financial institution pursuant to the loan. Any

credit allowed but not used in a taxable year may be carried forward for a period not to exceed five (5) taxable years. In no event shall a credit allowed pursuant to the provisions of this subsection be transferable or refundable.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 5078, is amended to read as follows:

Section 5078. A. For a period of up to ten (10) years from the date of tenant's occupancy in an incubator, income earned by the tenant as a result of activities conducted as an occupant in an incubator, including income distributed to partners, shareholders of a corporation for which a Subchapter S election is in effect and to the members of a limited liability company, shall be exempt from state income tax. The exemption provided by this section shall remain in effect for such activities by such tenant after the date the tenant is no longer an occupant in an incubator, but not to exceed a total duration of ten (10) years for any tenant.

B. In order to qualify for the income tax exemption for the sixth through tenth year as authorized by this section, the tenant must make at least seventy-five percent (75%) of its gross sales constituting the principal business activity of the business to buyers located outside the state or to buyers whose principal business activity is conducted outside the state or to the federal government or to buyers located within the state if the product or service is resold to an out-of-state customer or buyer for ultimate use. Provided, if a tenant does not achieve the qualifying percentage for any one of the above tax years, the tenant shall not be disqualified for subsequent tax years in which the qualifying percentage is achieved.

C. The Oklahoma Tax Commission shall promulgate rules to implement the provisions of this section.

SECTION 12. This act shall become effective January 1, 2003.

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