

ENGROSSED HOUSE
BILL NO. 3078

By: Pruett, Billy, Armes,
DeWitt, Denney, Blackwell,
Ellis, Glenn, Hickman,
Roggow, Walker and Braddock
of the House

and

Gumm of the Senate

(rural economic development - Rural Equity Capital
Access and Promotion Act - amending 3 sections in
Title 68 - Rural Business Venture Capital Formation
Incentive Act - codification -
effective dates)

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 5001 of Title 62, unless there
is created a duplication in numbering, reads as follows:

Sections 1 through 8 of this act shall be known and may be cited
as the "Rural Equity Capital Access and Promotion Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 5002 of Title 62, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Equity portfolio" means those shares of stock, membership
interests in a limited liability company, partnership interests or
other evidence of an equity investment in a lawful for-profit
business enterprise conducting business in a legally recognized
form;

2. "Equity securities" means documentary evidence of shares in
a corporate entity, membership interests in a limited liability
company, documentary evidence of an interest in a partnership or

other documentary evidence of invested capital in a lawful for-profit business enterprise and for which the investor in the business did not incur any indebtedness in order to make the equity investment;

3. "Investment horizon" means a minimum of six (6) years and a maximum of ten (10) years after the full investment of the balance of the Rural Equity Capital Access and Promotion Trust Fund;

4. "Qualified rural small business" means a lawful for-profit business having either the form of a corporation, limited liability company, general or limited partnership or other legally recognized business entity that allows the investment of equity capital to be adequately documented for the purposes authorized by this act, the principal business activity of which is conducted in an area other than a Metropolitan Statistical Area and which is engaged in an activity other than finance, real estate, insurance, oil and gas drilling and exploration or the furnishing of water, heat, light or electrical power; and

5. "Trust fund" means the Rural Equity Access and Promotion Trust Fund created by Section 8 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5003 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that investment of private equity capital in qualified rural small business enterprises is essential to the economic vitality of rural areas of the State of Oklahoma. Equity capital is averse to many of the risks perceived to be associated with business activity in rural areas. In order to promote the economic well-being of citizens in rural areas of the state, the Legislature finds that it is in furtherance of an essential public purpose to make funds available in order to stimulate the investment of equity capital in a way that shares risk and reward in a fair and reasonable way between the State of Oklahoma and individuals or

entities in the private sector who invest essential capital in rural business enterprises if there is a possibility of a reasonable rate of return for the level of risk being undertaken.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5004 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Center for the Advancement of Science and Technology shall be authorized to receive appropriations or other revenues and investments of private equity capital as authorized by this act for the purposes of promoting investment of private equity capital in business activity located in or which directly benefits rural areas of the state.

B. The Oklahoma Center for the Advancement of Science and Technology shall be deemed to hold any appropriated or other funds and private equity capital in trust for the benefit of the State of Oklahoma and its residents and in trust for the individuals and entities making private equity capital available for investment in qualified rural small business enterprises.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5005 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Center for the Advancement of Science and Technology shall engage the services of a professional equity funds manager in order to implement the provisions of the Rural Equity Capital Access and Promotion Act. The professional equity funds manager shall have at least ten (10) years of experience with respect to the topics of venture capital investment, small business capitalization, start-up stage financing, early stage financing, intermediate financing and later stage financing.

B. The equity funds manager shall be responsible for attempting to obtain a minimum amount of private equity capital equal to or exceeding Six Million Dollars (\$6,000,000.00) to match the funding

provided to the Oklahoma Center for the Advancement of Science and Technology pursuant to law.

C. No investment of any funds under the control of the Oklahoma Center for the Advancement of Science and Technology pursuant to the provisions of the Rural Equity Capital Access and Promotion Act shall take place until at least Six Million Dollars (\$6,000,000.00) of private equity capital has been placed with the Oklahoma Center for the Advancement of Science and Technology pursuant to actions taken by the professional equity fund manager engaged for such purpose.

D. All monies appropriated to the Oklahoma Center for the Advancement of Science and Technology and all private equity capital shall be deposited initially in the Rural Equity Capital Access and Promotion Trust Fund created pursuant to Section 8 of this act.

E. No equity investment shall be made in any otherwise qualifying rural business enterprise until the total amount of funds in the Rural Equity Capital Access and Promotion Trust Fund equals or exceeds Fifteen Million Dollars (\$15,000,000.00) consisting of Nine Million Dollars (\$9,000,000.00) from such sources as may be provided to the Oklahoma Center for the Advancement of Science and Technology by law and the Six Million Dollars (\$6,000,000.00) of private equity capital described by subsection B of this section.

F. When the total amount of funds in the Rural Equity Capital Access and Promotion Trust Fund equals or exceeds Fifteen Million Dollars (\$15,000,000.00), the equity funds manager shall begin to supervise the process of making direct equity investments in qualifying rural business enterprises.

G. The total amount of monies in the Rural Equity Capital Access and Promotion Trust Fund shall be fully invested not later than three (3) years after the total amount of money in the Trust Fund equals Fifteen Million Dollars (\$15,000,000.00).

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5006 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Based upon the advice provided by the professional equity funds manager, the Oklahoma Center for the Advancement of Science and Technology shall make decisions regarding an investment horizon for the monies in the Trust Fund. No substantial sale of private equity securities in which funds have been invested shall take place until a minimum of six (6) years after the balance of the Trust Fund has been fully invested.

B. The maximum duration of the Rural Equity Capital Access and Promotion Act authorized by the provisions of this act shall not exceed ten (10) years from the last date as of which an investment in an equity security is made in a qualified rural small business.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5007 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. At the conclusion of the investment horizon period, the Oklahoma Center for the Advancement of Science and Technology shall determine the total amount of funds in the Rural Equity Capital Access and Promotion Trust Fund at the beginning of the program and compare that figure to the total value of the equity portfolio as of the end of the investment period.

B. Except as otherwise provided by this section, in the aggregate, the total number of persons or entities who provided private equity capital to the Rural Equity Capital Access and Promotion Trust Fund shall be entitled to a distribution from the proceeds of the sale of the equity portfolio equal to one hundred fifty percent (150%) of the total amount of all private equity capital provided to the Rural Equity Capital Access and Promotion Trust Fund prior to the first round of investment activity.

C. The distribution required by subsection B of this section to the entities that provided private equity capital shall not be in excess of the total value of the equity securities portfolio after its liquidation.

D. No investor of private equity capital shall have any claim against the State of Oklahoma, the Oklahoma Center for the Advancement of Science and Technology, the professional fund manager or any other entity of state government if the total value of the equity portfolio is less than the amount required to make the distribution otherwise required by subsection B of this section.

E. The distribution of monies according to the provisions of subsection B of this section shall be made in proportion to the amount which each entity making a private equity contribution to the Rural Equity Capital Access and Promotion Trust Fund bears to the total of all private equity contributions made to the Trust Fund prior to the date as of which the monies in the Trust Fund were first invested in the equity securities of any qualified rural small business.

F. After the distribution of portfolio value prescribed by subsection B of this section, if there are any funds remaining, the Oklahoma Center for the Advancement of Science and Technology shall make a further distribution of remaining proceeds from the liquidation of the equity portfolio according to the following formula:

1. Forty percent (40%) shall be paid to the State Treasurer and shall be apportioned to the General Revenue Fund of the State Treasury;

2. Forty percent (40%) shall be distributed to the individuals and entities to whom and to which a distribution was made pursuant to subsection B of this section and according to the same formula used to determine the amount of value distributed to each private equity investor; and

3. Twenty percent (20%) shall be distributed to the professional equity funds manager engaged by the Oklahoma Center for the Advancement of Science and Technology.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5008 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 Oklahoma Center for the Advancement of Science and Technology to be designated the "Rural Equity Capital Access and Promotion Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Oklahoma Center for the Advancement of Science and Technology from appropriations, revenues or investment of private equity capital. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Center for the Advancement of Science and Technology for the purpose of implementing the provisions of the Rural Equity Capital Access and Promotion 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 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.105 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "rural business" means any corporation, partnership, sole proprietorship or other business entity qualifying as "rural" under the standards contained in Section 4279.108 of Title 7 of the Code of Federal Regulations (7 C.F.R., Section 4279.108).

B. For taxable years beginning after December 31, 2006, every rural business operating within this state or entity paying fees to the U.S. Department of Agriculture or the SBA in order to obtain

financing on behalf of rural businesses shall be entitled to claim as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, subject to the limitations provided by subsection C of this section, any amount paid to the U.S. Department of Agriculture or the SBA as a guaranty fee or other fee paid to these agencies pursuant to the obtaining of financing guaranteed or provided by the Department of Agriculture or the SBA.

C. The credit authorized by this section shall only be claimed against the tax liability resulting from income generated by the rural business or the entity obtaining financing on behalf of rural businesses. If an income tax return upon which this credit is claimed includes taxable income from sources other than the rural business, the credit shall only be allowed to be claimed upon a percentage of the income tax liability which does not exceed the percentage of income generated by the rural business as compared to the total Oklahoma adjusted gross income shown on the return. The Oklahoma Tax Commission shall promulgate rules and prescribe forms to implement the provisions of this section.

D. If the credit authorized by this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer as computed pursuant to the provisions of subsection C of this section, the amount of the credit not used may be carried forward as a credit against subsequent income tax liability for a period not to exceed five (5) years. The credit shall be claimable only by the rural business which is the primary obligor in the financing transaction or obtained financing or rural businesses and which actually paid the guaranty or other fee.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2370.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There shall be allowed a credit against the tax imposed by Section 2370 of Title 68 of the Oklahoma Statutes for any state

banking association, national banking association and credit union organized under the laws of this state for the amount of the guaranty fee paid by the banking association or credit union to the United States Department of Agriculture pursuant to the 7 C.F.R., Section 4279 rural business loan guaranty program.

B. The credit authorized by this section may be claimed for guaranty fees paid on or after January 1, 2007.

C. No credit may be claimed pursuant to this section if, pursuant to the agreement between the banking association or credit union and the entity to which proceeds are made available, the banking association or credit union adds the amount of the rural business loan guaranty fee to the amount financed by the borrower or in any other way recovers the guaranty fee amount from the borrower.

D. The credit authorized by this section may be claimed and if not fully used in the initial year for which the credit is claimed may be carried over, in order, to each of the five (5) succeeding taxable years. The credit authorized by this section may not be used to reduce the tax liability of the credit claimant below zero (0).

E. The Oklahoma Tax Commission shall prepare a report regarding the amount of tax credits claimed as authorized by this section. The report shall be submitted to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate not later than March 31 of each year.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 2357.61, as last amended by Section 18, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.61), is amended to read as follows:

Section 2357.61 As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any

other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Oklahoma small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:
 - (1) Major Group 1 of Division A, and
 - (2) Major Group 2 of Division A, and
- d. qualifies as a small business as defined by the federal Small Business Administration;

6. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 8 of this section;

7. "Qualified small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,

- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its capitalization in any one company; ~~and~~

8. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution; and

9. "Targeted high-risk debt" means indebtedness created by lending funds to a qualified Oklahoma small business venture that has the following characteristics:

- a. has applied for and been turned down for conventional financing with a bank,
- b. is a "Low-Income Enterprise" as defined by the United States Small Business Administration (13 C.F.R., Section 108.50).

SECTION 12. AMENDATORY 68 O.S. 2001, Section 2357.72, as last amended by Section 19, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.72), is amended to read as follows:

Section 2357.72 Definitions.

As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma rural small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right

to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b) (1) (C) of the Internal Revenue Code of 1986, as amended;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Nonmetropolitan area" means an area which is not an "urbanized area" as defined by the United States Bureau of the

Census. An urbanized area comprises one or more places ("central places") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of fifty thousand (50,000) persons. An urban fringe generally consists of contiguous territory having a density of at least one thousand (1,000) persons per square mile. An urban fringe also includes outlying territory of such density if it was connected to the core of the contiguous area by road and is within one and one-half road miles of that core, or within five (5) road miles of the core but separated by water or other undevelopable territory. Other territory with a population density of fewer than one thousand (1,000) people per square mile is included within an urban fringe if it eliminates an enclave or closes an indentation in the boundary of the urbanized area;

6. "Oklahoma rural small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified rural small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state,
- d. except as otherwise provided by this subparagraph, is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of ~~Divisions~~ Division A, C, D, E, F or I of the

Standard Industrial Classification Manual, 1987

revision with the following exceptions:

- (1) Major Group 1 of Division A, and
- (2) Major Group 2 of Division A, and

e. qualifies as a small business as defined by the federal Small Business Administration;

7. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph ~~9~~ 10 of this section;

8. "Qualified rural small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than Five Hundred Thousand Dollars (\$500,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty-five percent (25%) of its capitalization in any one company; ~~and~~

9. "Rural targeted high-risk debt" means indebtedness created by lending funds to a qualified Oklahoma small business venture that has the following characteristics:

- a. has applied for and been turned down for conventional financing with a bank,
- b. is a "Low-Income Enterprise" as defined by the United States Small Business Administration (13 C.F.R., Section 108.50); and

10. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution.

SECTION 13. AMENDATORY 68 O.S. 2001, Section 2357.73, as last amended by Section 5, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.73), is amended to read as follows:

Section 2357.73 A. For taxable years beginning after December 31, 2000, and before January 1, ~~2008~~ 2011, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title, for qualified investment in qualified rural small business capital companies. Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title; however, no credits may be claimed based upon investments using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title prior to July 1, 2005.

B. The credit provided for in subsection A of this section shall be thirty percent (30%) of the cash amount invested in qualified rural small business capital companies and may only be claimed for a taxable year during which the qualified rural small business capital company invests funds in an Oklahoma rural small business venture and the credit shall be allowed for the amount of funds invested in an Oklahoma rural small business venture. If the

tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ten (10) taxable years.

C. No taxpayer may claim the credit provided for in this section for investments in qualified rural small business capital companies made prior to January 1, 2001.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified rural small business capital company is used by an Oklahoma rural small business venture for the acquisition of any other legal entity.

E. No financial lending institution shall be eligible to claim the credit provided for in this section except with respect to amounts invested in a qualified rural small business capital company.

F. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

SECTION 14. This act shall become effective July 1, 2006.

Passed the House of Representatives the 16th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate