

CS for SB 1693

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**THE STATE SENATE**  
**Wednesday, March 1, 2006**

**Committee Substitute for**  
**Senate Bill No. 1693**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1693 - By: FISHER of the Senate and CAREY of the House.

[revenue and taxation - Small Business Capital Formation Incentive Act and the Rural Venture Capital Formation Incentive Act - codification - effective date ]

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

SECTION 1. 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~~ the Small Business Capital Formation Incentive 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;

- 1        2. "Capitalization" means the amount of:
- 2            a. any funds that have actually been contributed to the
- 3                    corporation, limited liability company or partnership,
- 4            b. any contractual commitment to provide funds to the
- 5                    corporation, limited liability company or partnership
- 6                    to the extent that such commitment is payable on
- 7                    demand and has substantial economic penalties for
- 8                    breach of the commitment to provide such funds, ~~and~~
- 9            c. any allocation of tax credit authority awarded to the
- 10                    corporation, limited liability company or partnership
- 11                    by the Community Development Financial Institutions
- 12                    Fund pursuant to Section 45D of the Internal Revenue
- 13                    Code of 1986, as amended, to the extent such
- 14                    allocation has not been previously designated by the
- 15                    corporation, limited liability company or partnership
- 16                    as contemplated by Section 45D(b) (1) (C) of the
- 17                    Internal Revenue Code of 1986, as amended; and
- 18            d. capitalization shall not include any funds from an
- 19                    investor that were borrowed for the purpose of
- 20                    investing in a qualified small business capital
- 21                    company or any funds from a limited liability company,
- 22                    partnership or subchapter S corporation which has

1                   common members, partners or shareholders with the  
2                   qualified small business capital company;

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

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

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

14           a. has or will have, ~~immediately~~ within ninety (90) days  
15           after a loan or investment is made by a qualified  
16           small business capital company, at least fifty percent  
17           (50%) of its employees or assets located in Oklahoma,

18           b. needs financial assistance in order to commence or  
19           expand such business which provides or intends to  
20           provide goods or services,

21           c. is engaged in a lawful business activity under any  
22           Industry Number appearing under any Major Group Number  
23           of Divisions A, C, D, E, F or I of the Standard

1 Industrial Classification Manual, 1987 revision with  
2 the following exceptions:

3 (1) Major Group 1 of Division A, and

4 (2) Major Group 2 of Division A, and

5 d. qualifies as a small business as defined by the  
6 federal Small Business Administration;

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

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

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

20 b. the principal place of business of the corporation,  
21 limited liability company or partnership is located  
22 within this state,

- 1           c.    the capitalization of the corporation, limited  
2                    liability company or partnership is not less than One  
3                    Million Dollars (\$1,000,000.00), and  
4           d.    the corporation, limited liability company or  
5                    partnership has investment of not more than twenty  
6                    percent (20%) of its capitalization in any one company  
7                    at the conclusion of the tax year of a corporation,  
8                    limited liability company or partnership; and

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

12           SECTION 2.        AMENDATORY        68 O.S. 2001, Section 2357.62, as  
13           last amended by Section 3, Chapter 299, O.S.L. 2005 (68 O.S. Supp.  
14           2005, Section 2357.62), is amended to read as follows:

15           Section 2357.62 A. For taxable years beginning after December  
16           31, 1997, and before January 1, 2012, there shall be allowed a  
17           credit against the tax imposed by Section 2355 or, effective January  
18           1, 2001, Section 2370 of this title or, effective July 1, 2001,  
19           against the tax imposed by Section 624 or 628 of Title 36 of the  
20           Oklahoma Statutes, or effective July 1, 2006, against the taxes  
21           imposed by Sections 1001, 1101 or 1102 of this title, for qualified  
22           investment in qualified small business capital companies. Credits  
23           shall be allowed based upon investments, occurring after May 31,

1 2004, using capitalization pursuant to subparagraph c of paragraph 2  
2 of Section 2357.61 of this title; however, no credits may be claimed  
3 based upon investments using capitalization pursuant to subparagraph  
4 c of paragraph 2 of Section 2357.61 of this title prior to July 1,  
5 2005. The credit shall be taken in the tax year in which the  
6 qualified investment was made.

7 B. The credit provided for in subsection A of this section  
8 shall be twenty percent (20%) of the cash amount invested in  
9 qualified small business capital companies and may only be claimed  
10 for a taxable year during which the qualified small business capital  
11 company invests funds in an Oklahoma small business venture and the  
12 credit shall be allowed for the amount of funds invested in an  
13 Oklahoma small business venture. If the tax credit exceeds the  
14 amount of taxes due or if there are no state taxes due of the  
15 taxpayer, the amount of the claim not used as an offset against the  
16 taxes of a taxable year may be carried forward for a period not to  
17 exceed ten (10) taxable years.

18 C. No taxpayer may claim the credit provided for in this  
19 section for investments in qualified small business capital  
20 companies made prior to January 1, 1998.

21 D. No taxpayer may claim the credit provided for in this  
22 section if the capital provided by a qualified small business

1 capital company is used by an Oklahoma small business venture for  
2 the acquisition of any other legal entity.

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

6 F. No taxpayer may claim the credit authorized by this section  
7 for the same invested amount for which any credit is claimed  
8 pursuant to either Section 2357.73 or 2357.74 of this title.

9 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.63, as  
10 last amended by Section 4, Chapter 299, O.S.L. 2005 (68 O.S. Supp.  
11 2005, Section 2357.63), is amended to read as follows:

12 Section 2357.63 A. For taxable years beginning after December  
13 31, 1997, and before January 1, 2012, there shall be allowed a  
14 credit against the tax imposed by Section 2355 or, effective January  
15 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
16 against the tax imposed by Section 624 or 628 of Title 36 of the  
17 Oklahoma Statutes, or effective July 1, 2006, against the taxes  
18 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
19 investment made in Oklahoma small business ventures in conjunction  
20 with investment in such ventures made by a qualified small business  
21 capital company. Credits shall be allowed based upon investments,  
22 occurring after May 31, 2004, using capitalization pursuant to  
23 subparagraph c of paragraph 2 of Section 2357.61 of this title;

1 however, no credits may be claimed for an investment in conjunction  
2 with capitalization pursuant to subparagraph c of paragraph 2 of  
3 Section 2357.61 of this title prior to July 1, 2005. The credit  
4 shall be taken in the tax year in which the qualified investment was  
5 made.

6 B. The credit provided for in this section shall be twenty  
7 percent (20%) of the cash amount of qualified investment made in  
8 Oklahoma small business ventures in conjunction with investment in  
9 such ventures made by a qualified small business capital company and  
10 shall be allowed for a taxable year during which the investment is  
11 made in an Oklahoma small business venture. If the tax credit  
12 allowed pursuant to subsection A of this section exceeds the amount  
13 of taxes due or if there are no state taxes due of the taxpayer, the  
14 amount of the claim not used as an offset against the taxes of a  
15 taxable year may be carried forward for a period not to exceed ten  
16 (10) taxable years. To qualify for the credit authorized by this  
17 section, an investment shall be:

18 1. Made by a shareholder or partner of a qualified small  
19 business capital company that has invested funds in an Oklahoma  
20 small business venture;

21 2. Invested in the purchase of equity or near-equity in an  
22 Oklahoma small business venture;

1           3. Made under the same terms and conditions as the investment  
2 made by the qualified small business capital company; and

3           4. Limited to the lesser of:

4           a. two hundred percent (200%) of any investment by the  
5 taxpayer in the qualified small business capital  
6 company, or

7           b. two hundred percent (200%) of the investment made by  
8 the qualified small business capital company in the  
9 Oklahoma small business venture.

10          C. No taxpayer may claim the credit provided for in this  
11 section for investment made prior to January 1, 1998.

12          D. No taxpayer may claim the credit authorized by this section  
13 for the same invested amount for which any credit is claimed  
14 pursuant to either Section 2357.73 or 2357.74 of this title.

15          SECTION 4.        NEW LAW        A new section of law to be codified  
16 in the Oklahoma Statutes as Section 2357.63A of Title 68, unless  
17 there is created a duplication in numbering, reads as follows:

18               For tax years beginning on or after January 1, 2007, in no event  
19 shall the total credits authorized by Sections 2357.62 and 2357.63  
20 exceed Ten Million Dollars (\$10,000,000.00) during a calendar year.  
21 In the event that credits exceed that amount, the credits authorized  
22 shall be reduced on a pro rata basis. The Oklahoma Tax Commission  
23 shall promulgate rules to enforce the provisions of this section.

1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.72, as  
2 last amended by Section 19, Chapter 479, O.S.L. 2005 (68 O.S. Supp.  
3 2005, Section 2357.72), is amended to read as follows:

4 Section 2357.72 As used in this act:

5 1. "Acquisition" means the use of capital by an Oklahoma rural  
6 small business venture within six (6) months after obtaining the  
7 capital to purchase fifty-one percent (51%) or more of the voting  
8 interest entitled to elect the governing board, or its equivalent,  
9 of any other legal entity, regardless of the legal form of the  
10 entity. As used in this act, "acquisition" does not mean the right  
11 to participate in the proceeds from sale of goods or services,  
12 whether denominated a royalty, royalty interest or otherwise, and  
13 does not mean the right to intellectual property, whether the rights  
14 arise from copyright, trademark or patent law;

15 2. "Capitalization" means the amount of:

- 16 a. any funds that have actually been contributed to the  
17 corporation, limited liability company or partnership,  
18 b. any contractual commitment to provide funds to the  
19 corporation, limited liability company or partnership  
20 to the extent that such commitment is payable on  
21 demand and has substantial economic penalties for  
22 breach of the commitment to provide such funds, ~~and~~

1 c. any allocation of tax credit authority awarded to the  
2 corporation, limited liability company or partnership  
3 by the Community Development Financial Institutions  
4 Fund pursuant to Section 45D of the Internal Revenue  
5 Code of 1986, as amended, to the extent such  
6 allocation has not been previously designated by the  
7 corporation, limited liability company or partnership  
8 as contemplated by Section 45D(b)(1)(C) of the  
9 Internal Revenue Code of 1986, as amended; and

10 d. capitalization shall not include any funds from an  
11 investor that were borrowed for the purpose of  
12 investing in a qualified small business capital  
13 company or funds from a limited liability company,  
14 partnership or subchapter S corporation which has  
15 common members, partners or shareholders with the  
16 qualified small business capital company;

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

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

4           5. "Nonmetropolitan area" means an area which is not an  
5 "urbanized area" as defined by the United States Bureau of the  
6 Census. An urbanized area comprises one or more places ("central  
7 places") and the adjacent densely settled surrounding territory  
8 ("urban fringe") that together have a minimum of fifty thousand  
9 (50,000) persons. An urban fringe generally consists of contiguous  
10 territory having a density of at least one thousand (1,000) persons  
11 per square mile. An urban fringe also includes outlying territory  
12 of such density if it was connected to the core of the contiguous  
13 area by road and is within one and one-half road miles of that core,  
14 or within five (5) road miles of the core but separated by water or  
15 other undevelopable territory. Other territory with a population  
16 density of fewer than one thousand (1,000) people per square mile is  
17 included within an urban fringe if it eliminates an enclave or  
18 closes an indentation in the boundary of the urbanized area;

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

- 21           a. has or will have, ~~immediately~~ within ninety (90) days  
22                           after a loan or investment is made by a qualified  
23                           rural small business capital company, at least fifty

- 1                   percent (50%) of its employees or assets located in  
2                   Oklahoma,
- 3           b.    needs financial assistance in order to commence or  
4                   expand such business which provides or intends to  
5                   provide goods or services,
- 6           c.    has its principal place of business within a  
7                   nonmetropolitan area of the state and conducts the  
8                   activity resulting in at least seventy-five percent  
9                   (75%) of its gross annual revenue from a  
10                  nonmetropolitan area of the state,
- 11          d.    except as otherwise provided by this subparagraph, is  
12                  engaged in a lawful business activity under any  
13                  Industry Number appearing under any Major Group Number  
14                  of Divisions A, C, D, E, F or I of the Standard  
15                  Industrial Classification Manual, 1987 revision with  
16                  the following exceptions:
- 17                       (1) Major Group 1 of Division A, and  
18                       (2) Major Group 2 of Division A, and
- 19          e.    qualifies as a small business as defined by the  
20                  federal Small Business Administration;

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

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

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

11          b. the principal place of business of the corporation,  
12          limited liability company or partnership is located  
13          within this state,

14          c. the capitalization of the corporation, limited  
15          liability company or partnership is not less than Five  
16          Hundred Thousand Dollars (\$500,000.00), and

17          d. the corporation, limited liability company or  
18          partnership has investment of not more than twenty-  
19          five percent (25%) of its capitalization in any one  
20          company at the conclusion of the tax year of the  
21          corporation, limited liability company or partnership;  
22          and

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

4       SECTION 6.        AMENDATORY        68 O.S. 2001, Section 2357.73, as  
5 last amended by Section 5, Chapter 299, O.S.L. 2005 (68 O.S. Supp.  
6 2005, Section 2357.73), is amended to read as follows:

7       Section 2357.73 A. For taxable years beginning after December  
8 31, 2000, and before January 1, 2008, there shall be allowed a  
9 credit against the tax imposed by Section 2355 or, effective January  
10 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
11 against the tax imposed by Section 624 or 628 of Title 36 of the  
12 Oklahoma Statutes, or effective July 1, 2006, against the taxes  
13 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
14 investment in qualified rural small business capital companies.  
15 Credits shall be allowed based upon investments, occurring after May  
16 31, 2004, using capitalization pursuant to subparagraph c of  
17 paragraph 2 of Section 2357.72 of this title; however, no credits  
18 may be claimed based upon investments using capitalization pursuant  
19 to subparagraph c of paragraph 2 of Section 2357.72 of this title  
20 prior to July 1, 2005. The credit shall be taken in the tax year in  
21 which the qualified investment was made.

22       B. The credit provided for in subsection A of this section  
23 shall be thirty percent (30%) of the cash amount invested in

1 qualified rural small business capital companies and may only be  
2 claimed for a taxable year during which the qualified rural small  
3 business capital company invests funds in an Oklahoma rural small  
4 business venture and the credit shall be allowed for the amount of  
5 funds invested in an Oklahoma rural small business venture. If the  
6 tax credit exceeds the amount of taxes due or if there are no state  
7 taxes due of the taxpayer, the amount of the claim not used as an  
8 offset against the taxes of a taxable year may be carried forward  
9 for a period not to exceed ten (10) taxable years.

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

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

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

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

1 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.74, as  
2 last amended by Section 6, Chapter 299, O.S.L. 2005 (68 O.S. Supp.  
3 2005, Section 2357.74), is amended to read as follows:

4 Section 2357.74 A. For taxable years beginning after December  
5 31, 2000, and before January 1, 2008, there shall be allowed a  
6 credit against the tax imposed by Section 2355 or, effective January  
7 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
8 against the tax imposed by Section 624 or 628 of Title 36 of the  
9 Oklahoma Statutes, or effective July 1, 2006, against the taxes  
10 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
11 investment made in Oklahoma rural small business ventures in  
12 conjunction with investment in such ventures made by a qualified  
13 rural small business capital company. Credits shall be allowed  
14 based upon investments, occurring after May 31, 2004, using  
15 capitalization pursuant to subparagraph c of paragraph 2 of Section  
16 2357.72 of this title; however, no credits may be claimed for an  
17 investment in conjunction with capitalization pursuant to  
18 subparagraph c of paragraph 2 of Section 2357.72 of this title prior  
19 to July 1, 2005. The credit shall be taken in the tax year in which  
20 the qualified investment was made.

21 B. The credit provided for in this section shall be thirty  
22 percent (30%) of the cash amount of qualified investment made in  
23 Oklahoma rural small business ventures in conjunction with

1 investment in such ventures made by a qualified rural small business  
2 capital company and shall be allowed for a taxable year during which  
3 the investment is made in an Oklahoma rural small business venture.  
4 If the tax credit allowed pursuant to subsection A of this section  
5 exceeds the amount of taxes due or if there are no state taxes due  
6 of the taxpayer, the amount of the claim not used as an offset  
7 against the taxes of a taxable year may be carried forward for a  
8 period not to exceed ten (10) taxable years. To qualify for the  
9 credit authorized by this section, an investment shall be:

10 1. Made by a shareholder or partner of a qualified rural small  
11 business capital company that has invested funds in an Oklahoma  
12 rural small business venture;

13 2. Invested in the purchase of equity or near-equity in an  
14 Oklahoma rural small business venture;

15 3. Made under the same terms and conditions as the investment  
16 made by the qualified rural small business capital company; and

17 4. Limited to the lesser of:

18 a. two hundred percent (200%) of any investment by the  
19 taxpayer in the qualified rural small business capital  
20 company, or

21 b. two hundred percent (200%) of the investment made by  
22 the qualified rural small business capital company in  
23 the Oklahoma rural small business venture.

1 C. No taxpayer may claim the credit provided for in this  
2 section for investment made prior to January 1, 2001.

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

6 SECTION 8. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 2357.74A of Title 68, unless  
8 there is created a duplication in numbering, reads as follows:

9 For tax years beginning on or after January 1, 2007, in no event  
10 shall the credits authorized by Sections 2357.73 and 2357.74 exceed  
11 Ten Million Dollars (\$10,000,000.00) during a calendar year. In the  
12 event that credits exceed that amount, the credits authorized shall  
13 be reduced on a pro rata basis. The Oklahoma Tax Commission shall  
14 promulgate rules to enforce the provisions of this section.

15 SECTION 9. This act shall become effective November 1, 2006.

16 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,  
17 As Amended and Coauthored.