

SB 1955

THE STATE SENATE
Monday, February 22, 2010

Senate Bill No. 1955
As Amended

SENATE BILL NO. 1955 - By: Marlatt of the Senate and Jordan of the House.

[public finance - Oklahoma Employee Stock Ownership Plan (ESOP) Linked Deposit Program Act - codification - effective date - 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 88.10 of Title 62, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 6 of this act shall be known and may be cited as the "Oklahoma Employee Stock Ownership Plan (ESOP) Linked Deposit Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 88.11 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Employee Stock Ownership Plan (ESOP) Linked Deposit Program Act:

1. "Eligible participant" means a company having its headquarters in the State of Oklahoma, which conducts a significant

1 portion of its operations in Oklahoma, and that has established a
2 tax-qualified employee stock ownership plan;

3 2. "Eligible lending institution" means a financial institution
4 that:

- 5 a. is eligible to make commercial loans,
- 6 b. is a public depository of state funds, and
- 7 c. agrees to participate in the linked deposit program;

8 3. "ESOP linked deposit" means a certificate of deposit placed
9 by the State Treasurer with an eligible lending institution for the
10 purpose of carrying out the intent of the Oklahoma Employee Stock
11 Ownership Plan (ESOP) Linked Deposit Program Act; and

12 4. "Board" means the Oklahoma Linked Deposit Review Board
13 created in Section 88.3 of Title 62 of the Oklahoma Statutes.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 88.12 of Title 62, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The State Treasurer is authorized to administer the Oklahoma
18 ESOP Linked Deposit Program and shall take all steps necessary to
19 implement the Oklahoma ESOP Linked Deposit Program and monitor
20 compliance of eligible lending institutions and eligible
21 participants, including the development of guidelines as necessary.

22 B. The State Treasurer shall submit an annual report outlining
23 the status of the Oklahoma ESOP Linked Deposit Program to the

1 Governor, the Lieutenant Governor, the President Pro Tempore of the
2 Senate and the Speaker of the House of Representatives.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 88.13 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The State Treasurer is authorized to disseminate information
7 and to provide ESOP linked deposit loan packages to the lending
8 institutions eligible for participation under the Oklahoma ESOP
9 Linked Deposit Program.

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

14 C. An eligible lending institution that desires to receive an
15 ESOP linked deposit shall accept and review applications for loans
16 from eligible participants. The lending institution shall apply all
17 usual lending standards to determine the creditworthiness of each
18 eligible participant. Loans under the Oklahoma ESOP Linked Deposit
19 Program shall conform to the following conditions:

20 1. Maximum loan amounts under the Oklahoma ESOP Linked Deposit
21 Program shall not exceed One Million Dollars (\$1,000,000.00) for an
22 eligible participant;

1 2. Eligible lending institutions are authorized to provide
2 loans for the following purposes:

- 3 a. to purchase a company through an employee stock
4 ownership plan which shall be at least fifty-one
5 percent (51%) employee owned, or will become at least
6 fifty-one percent (51%) employee owned as a result of
7 financial assistance from the lender,
8 b. to allow a company that is less than fifty-one percent
9 (51%) employee owned to become at least fifty-one
10 percent (51%) employee owned,
11 c. to allow a company that is already at least fifty-one
12 percent (51%) employee owned to increase the level of
13 employee ownership of the company, and
14 d. to allow a company that is already at least fifty-one
15 percent (51%) employee owned to expand operations and
16 increase or preserve employment;

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

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

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

5 6. Linked deposits may be made for any maturity considered
6 appropriate by the State Treasurer not to exceed two (2) years and
7 may be renewed for up to an additional three renewals not to exceed
8 two (2) years each at the discretion of the State Treasurer with the
9 approval of the lending institution. No renewals will be allowed
10 unless the amount of principal has been reduced by a minimum of five
11 percent (5%) and all interest paid to date from the time of the
12 prior loan or renewal. Interest shall be paid at the times
13 determined by the State Treasurer. The State Treasurer may place an
14 ESOP linked deposit with an eligible lending institution or decline
15 to do so based on the cash flow needs of the state, the security of
16 state funds, and the investment needs of the state.

17 D. The eligible lending institution shall forward to the State
18 Treasurer an ESOP linked deposit loan package in the form and manner
19 prescribed and approved by the State Treasurer. The package shall
20 include:

21 1. Information regarding the amount of the loan requested by
22 each eligible participant;

1 2. A copy of the eligible participant's business plan showing
2 that not less than fifty-one percent (51%) of all interests in the
3 company is or will be owned or controlled by an employee stock
4 ownership plan;

5 3. A feasibility study by an objective third party with a
6 positive determination that the participant will generate sufficient
7 margin to repay the loan; and

8 4. Such other information regarding each business the State
9 Treasurer and the Board requires. The institution shall certify
10 that each applicant is an eligible participant and shall, for each
11 business, certify the present borrowing rate applicable to each
12 specific eligible participant.

13 E. Upon receipt of a completed ESOP linked deposit loan
14 package, the State Treasurer may review or audit the information
15 contained in the package, including, but not limited to, a review or
16 audit of the values used to calculate the ratios of debts to assets
17 as provided by the applicant and the institution. The State
18 Treasurer shall forward the completed ESOP linked deposit loan
19 package to the Board. The Board shall review the package to
20 determine if the package is qualified under the Oklahoma ESOP Linked
21 Deposit Program. The Board shall make a recommendation concerning
22 the package at the next regularly scheduled Board meeting or at a
23 special Board meeting. The Board shall return the package to the

1 State Treasurer with a written recommendation of approval or
2 rejection. If the Board recommends rejection, the written
3 recommendation shall include reasons for the rejection. The Board
4 shall forward a copy of its rejection notice to the lending
5 institution and the borrower. The State Treasurer shall keep a
6 chronological list of applications forwarded by the Board for
7 approval or rejection.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 88.14 of Title 62, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Applications approved by the Board shall be subject to
12 available funds, and if a loan or loan package is not funded for
13 lack of funds, it will be funded in the chronological order of its
14 approval.

15 B. Upon acceptance of the ESOP linked deposit loan package or
16 any portion thereof, the State Treasurer shall notify the Board, the
17 lending institution and the borrower. Upon acceptance, the State
18 Treasurer may place certificates of deposit with the eligible
19 lending institution at a rate below current market rates, as
20 determined and calculated by the State Treasurer. When necessary,
21 the State Treasurer may place certificates of deposit or may invest
22 in obligations or securities prior to acceptance of an ESOP linked
23 deposit loan package.

1 C. Upon the placement of an ESOP linked deposit with an
2 eligible lending institution, the institution shall fund the loan to
3 each approved eligible participant listed in the ESOP linked deposit
4 loan package in accordance with the ESOP linked deposit agreement
5 between the institution and the State Treasurer. The percentage
6 rate of the loan shall be reduced by at least the same number of
7 percentage points that the certificate of deposit was reduced upon
8 placement. A certification of compliance with this subsection in
9 the form and manner as prescribed by the State Treasurer shall be
10 required of the eligible lending institution. Deposits placed by
11 the State Treasurer shall be secured by collateralization in the
12 same manner as deposits of other state funds.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 88.15 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 The State of Oklahoma and the State Treasurer shall not be
17 liable to any eligible lending institution in any manner for payment
18 of the principal or interest on the loan to an eligible participant.
19 Any delay in payments in default on the part of an eligible
20 participant does not in any manner affect the ESOP linked deposit
21 agreement between the eligible lending institution and the State
22 Treasurer.

23 SECTION 7. This act shall become effective July 1, 2010.

1 SECTION 8. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
5 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-16-10 - DO PASS,
6 As Amended and Coauthored.