

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1955

By: Marlatt

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5  
6 AS INTRODUCED

7 An Act relating to public finance, creating the  
8 Oklahoma Employee Stock Ownership Plan (ESOP) Linked  
9 Deposit Program Act; stating short title; defining  
10 terms; authorizing State Treasurer to administer  
11 program; requiring guidelines and report; authorizing  
12 State Treasurer to disseminate information to various  
13 parties; providing procedures and requirements;  
14 setting limits; authorizing loans; providing for  
15 review of loan application packages; authorizing  
16 State Treasurer to place certain certificates of  
17 deposit with lending institution; providing for  
18 lending institution to provide loans; providing that  
19 the State of Oklahoma is not liable for loans;  
20 providing for codification; providing an effective  
21 date; and declaring an emergency.

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

23 SECTION 1. NEW LAW A new section of law to be codified  
24 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".

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

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

6 1. "Eligible participant" means a company having its  
7 headquarters in the State of Oklahoma, which conducts a significant  
8 portion of its operations in Oklahoma, and that has established a  
9 tax-qualified employee stock ownership plan;

10 2. "Eligible lending institution" means a financial institution  
11 that:

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

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

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

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

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1           A. The State Treasurer is authorized to administer the Oklahoma  
2 ESOP Linked Deposit Program and shall take all steps necessary to  
3 implement the Oklahoma ESOP Linked Deposit Program and monitor  
4 compliance of eligible lending institutions and eligible  
5 participants, including the development of guidelines as necessary.

6           B. The State Treasurer shall submit an annual report outlining  
7 the status of the Oklahoma ESOP Linked Deposit Program to the  
8 Governor, the Lieutenant Governor, the President Pro Tempore of the  
9 Senate and the Speaker of the House of Representatives.

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

13           A. The State Treasurer is authorized to disseminate information  
14 and to provide ESOP linked deposit loan packages to the lending  
15 institutions eligible for participation under the Oklahoma ESOP  
16 Linked Deposit Program.

17           B. The ESOP linked deposit loan package shall be completed by  
18 the borrower before being forwarded to the lending institution for  
19 consideration. Any technical assistance in completing such loan  
20 package shall be provided by the State Treasurer.

21           C. An eligible lending institution that desires to receive an  
22 ESOP linked deposit shall accept and review applications for loans  
23 from eligible participants. The lending institution shall apply all  
24 usual lending standards to determine the creditworthiness of each

1 eligible participant. Loans under the Oklahoma ESOP Linked Deposit  
2 Program shall conform to the following conditions:

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

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

8 a. to purchase a company through an employee stock  
9 ownership plan which shall be at least fifty-one  
10 percent (51%) employee owned, or will become at least  
11 fifty-one percent (51%) employee owned as a result of  
12 financial assistance from the lender,

13 b. to allow a company that is less than fifty-one percent  
14 (51%) employee owned to become at least fifty-one  
15 percent (51%) employee owned,

16 c. to allow a company that is already at least fifty-one  
17 percent (51%) employee owned to increase the level of  
18 employee ownership of the company, and

19 d. to allow a company that is already at least fifty-one  
20 percent (51%) employee owned to expand operations and  
21 increase or preserve employment;

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

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

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

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

20 D. The eligible lending institution shall forward to the State  
21 Treasurer an ESOP linked deposit loan package in the form and manner  
22 prescribed and approved by the State Treasurer. The package shall  
23 include:  
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1 1. Information regarding the amount of the loan requested by  
2 each eligible participant;

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

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

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

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

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

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

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

16 B. Upon acceptance of the ESOP linked deposit loan package or  
17 any portion thereof, the State Treasurer shall notify the Board, the  
18 lending institution and the borrower. Upon acceptance, the State  
19 Treasurer may place certificates of deposit with the eligible  
20 lending institution at a rate below current market rates, as  
21 determined and calculated by the State Treasurer. When necessary,  
22 the State Treasurer may place certificates of deposit or may invest  
23 in obligations or securities prior to acceptance of an ESOP linked  
24 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.  
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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.

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