

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1159

By: Adelson of the Senate

and

Sears of the House

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10 COMMITTEE SUBSTITUTE

[Oklahoma Capital Investment Board - tax credits -

emergency]

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

17 SECTION 1. AMENDATORY 74 O.S. 2011, Section 5085.7, is
18 amended to read as follows:

19 Section 5085.7 A. The State of Oklahoma hereby issues tax
20 credits that may be used to reduce the tax liability of a person,
21 firm or corporation if such liability is imposed pursuant to the
22 provisions of Section 2355 of Title 68 of the Oklahoma Statutes or
23 Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax

1 credits against liabilities imposed pursuant to Section 624 of Title
2 36 of the Oklahoma Statutes shall be limited to the amount that
3 would otherwise be collected and allocated to the General Revenue
4 Fund of the State Treasury. Tax credits issued and transferred to
5 the Oklahoma Development Finance Authority pursuant to the
6 provisions of this section and prior to the effective date of this
7 act are hereby transferred to the Oklahoma Capital Investment Board,
8 created pursuant to the provisions of this act. The total amount of
9 tax credits that are hereby issued, or are transferred pursuant to
10 this section to the Board, is One Hundred Million Dollars
11 (\$100,000,000.00). The credits shall be freely transferable to
12 subsequent transferees; however, no such tax credit shall be
13 exercisable before July 1, 1990, nor, except as otherwise provided
14 by subsection B of this section, after July 1, 2015 2020.

15 B. Tax credits may be exercised after July 1, 2020, if such tax
16 credits were purchased or were agreed to be purchased based upon a
17 contractual commitment to the Oklahoma Capital Investment Board made
18 by a person or entity pursuant to an agreement originally entered
19 into no later than December 31, 1995. Any such credits may be
20 exercised until fully utilized by the person or entity having
21 entered into such contractual commitment or by any person or entity
22 having obtained tax credits from a person or entity having made such

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1 a contractual commitment (or any subsequent transferee) if such tax
2 credit transfer occurred prior to the effective date of this act.

3 C. The Board shall not transfer tax credits except in
4 conjunction with a legitimate call on a Board guarantee. The Board
5 shall immediately notify the President Pro Tempore of the Senate,
6 the Speaker of the House of Representatives and the Governor in
7 writing if any tax credit is transferred in conjunction with a
8 legitimate call on a Board guarantee; provided, the Board shall not
9 be required to make such notification for transfers to subsequent
10 transferees.

11 ~~B.~~ D. The Oklahoma Capital Investment Board shall determine the
12 amount of individual tax credits to be transferred pursuant to this
13 act and may negotiate for sale of such credits subject only to the
14 limits imposed by this act, including the provisions of subsection F
15 of Section 5085.8 of this title.

16 E. The Board shall ensure that no more than Twenty Million
17 Dollars (\$20,000,000.00) in tax credits has been transferred which
18 may be claimed and used to reduce the tax otherwise imposed by
19 Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of
20 Title 36 of the Oklahoma Statutes for any one (1) fiscal year.

21 F. The Board shall clearly indicate upon the face of the
22 certificate or other document transferring the tax credit the
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1 principal amount of the tax credit and the taxable year or years for
2 which the credit may be claimed.

3 G. Any original sale of tax credits by the Board shall be by
4 competitive bidding unless the sale is for full-face value.

5 ~~E.~~ H. The Board shall, in conjunction with the Oklahoma Tax
6 Commission, develop a system for registration of any tax credits
7 issued or transferred pursuant to this act and a system of
8 certificates that permits verification that any tax credit claimed
9 upon a tax return is validly issued, properly taken in the year of
10 claim and that any transfers of the tax credit are made in
11 accordance with the requirements of this act.

12 ~~D.~~ I. The Board may pay a fee in connection with the purchase
13 by the Board of an option or other agreement pursuant to which a
14 transfer of tax credits authorized by this act may be made.

15 ~~E.~~ The J. Except as otherwise provided by this section and by
16 subsection F of Section 5085.8 of this title, the Board shall have
17 the power to make any contract, execute any document, charge
18 reasonable fees for services rendered, perform any act or enter into
19 any financial or other transaction necessary in order to carry out
20 its mission.

21 K. The Board may employ such persons as may be required for the
22 proper implementation of this act, the management of its assets, or
23 the performance of any function authorized or required by this act

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1 or necessary for the accomplishment of any such function. Such
2 persons shall be selected by the Board based upon outstanding
3 knowledge and leadership in the field for which the person performs
4 services for the Board.

5 SECTION 2. AMENDATORY 74 O.S. 2011, Section 5085.8, is
6 amended to read as follows:

7 Section 5085.8 A. ~~The~~ Except as otherwise provided by
8 subsection F of this section, the Board shall have the power to
9 solicit proposals from qualified investor groups for investment of
10 capital in accordance with the requirements of this act. The Board
11 shall establish criteria for selection of persons, firms,
12 corporations or other entities deemed qualified to generate capital
13 for investment in a manner which will result in a significant
14 potential to create jobs and to diversify and stabilize the economy
15 of the State of Oklahoma. Such criteria shall include the
16 applicant's level of experience, quality of management, investment
17 philosophy and process, historical investment performance,
18 probability of success in fund raising, the amount and timing of
19 fees to be paid, and such other investment criteria as may be
20 commonly used in professional portfolio management as the Board may
21 deem appropriate.

22 B. ~~The~~ Except as otherwise provided by subsection F of this
23 section, the Board shall have the power to extend a guarantee in the
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1 form of a put option or such other method as selected by the Board.
2 Guarantees may extend to principal plus interest over the term of
3 the guarantee at a rate set by Board resolution from time to time.
4 Guarantees in whatever form negotiated by the Board may be made for
5 any period of time, but no term shall expire prior to January 1,
6 1992. The Board may charge a reasonable fee for costs and the fair
7 compensation of risk associated with its guarantee. The guarantees
8 extended by the Board shall in no way be an obligation of the state
9 and may be restricted to specific funds or assets of the Board;
10 provided, however, proceeds from the sale of any tax credits shall
11 be sufficient to meet contractual guarantee obligations of the
12 Board. The Board shall have the right to contract freely to protect
13 the interests of the State of Oklahoma. The Board shall ensure that
14 at least Two Dollars (\$2.00) will be invested in Oklahoma businesses
15 or projects for every One Dollar (\$1.00) of principal guaranteed by
16 the Board.

17 C. If the Board purchases any security pursuant to an agreement
18 with an investor group, the Board shall acquire such securities and
19 may invest, manage, transfer or dispose of such securities in
20 accordance with policies for management of assets adopted by the
21 Board.

22 D. ~~The~~ Except as otherwise provided by subsection F of this
23 section, the Board shall have the power to make any contract,

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1 execute any document, perform any act or enter into any financial or
2 other transaction necessary in order to carry out its mission. The
3 Board may employ such persons as may be required for the performance
4 of any function authorized or required by this act or necessary for
5 the accomplishment of any such function. Such persons shall be
6 selected based upon outstanding knowledge and leadership in the
7 field for which the person performs services for the Board. In
8 selecting such persons, the Board shall hire persons who meet
9 standards applicable to persons responsible for investment of equity
10 and near-equity securities.

11 E. In carrying out the mission of the Board as authorized in
12 this act, neither the Board nor its officers, directors or employees
13 shall be considered to be broker-dealers, agents, investment
14 advisors or investment adviser representatives under Title 71 of the
15 Oklahoma Statutes. The tax credits issued or transferred pursuant
16 to the Oklahoma Capital Formation Act and Section 2357.7 of Title 68
17 of the Oklahoma Statutes shall not be considered to be securities
18 under Title 71 of the Oklahoma Statutes.

19 F. On and after the effective date of this act, except for the
20 investment of funds required by provisions in a contract executed by
21 the Board or by any subsidiary or affiliate of the Board prior to
22 the effective date of this act, or executed by an entity that was
23 not a subsidiary or affiliate of the Board at the time such contract

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1 was executed but which became a subsidiary or affiliate of the Board
2 subsequent to the execution of such contract, but prior to the
3 effective date of this act, neither the Oklahoma Capital Investment
4 Board nor any entity which is a subsidiary or affiliate of the Board
5 nor any entity which is controlled either directly or indirectly by
6 the Board or which acts under the authority of or pursuant to the
7 direction of the Oklahoma Capital Investment Board shall:

8 1. Enter into any contract authorizing or requiring the
9 investment of any funds obtained by the Board, or commitment binding
10 the Board to make any investment of any funds obtained by the Board,
11 or the investment of any funds obtained by a subsidiary, affiliate
12 or any entity under the direct or indirect control of the Board, in
13 a general partnership, limited partnership, corporation, limited
14 liability company, private equity or hedge fund or any other
15 lawfully recognized business entity or person; or

16 2. Modify any agreement executed prior to the effective date of
17 this act by the Oklahoma Capital Investment Board or executed by any
18 subsidiary or affiliate of the Board or executed by any entity that
19 was not a subsidiary or affiliate of the Board at the time such
20 contract was executed, but which subsequently became a subsidiary or
21 affiliate, in any manner that would have the effect of increasing
22 the amount of any contractual commitment to make an investment of
23 funds in a general or limited partnership, corporation, limited

1 liability company, private equity or hedge fund or any other
2 lawfully recognized entity or person.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5085.15 of Title 74, unless
5 there is created a duplication in numbering, reads as follows:

6 Within thirty (30) days after the Oklahoma Capital Investment
7 Board or any subsidiary or affiliate of the Board has made payment
8 of any remaining expense or obligation created by the Board or by
9 the subsidiary or affiliate, pursuant to the terms of any promissory
10 note, loan agreement, guaranty agreement, investment agreement or
11 other contract or agreement, any remaining monies paid to either the
12 Oklahoma Capital Investment Board or any subsidiary or affiliate of
13 the Board pursuant to the terms of an agreement or contract entered
14 into prior to the effective date of this act shall be paid by the
15 Board or by its subsidiary or affiliate to the General Revenue Fund
16 of the State Treasury.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 5085.16 of Title 74, unless
19 there is created a duplication in numbering, reads as follows:

20 None of the provisions of this act shall alter, amend, modify,
21 affect, diminish or impair the enforceability of, or any obligation
22 or liability of the Oklahoma Capital Investment Board or any entity
23 which is a subsidiary or affiliate of the Oklahoma Capital
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1 Investment Board or any entity which is controlled either directly
2 or indirectly by the Oklahoma Capital Investment Board under any
3 contract, agreement, guarantee or instrument entered into or
4 delivered by such party with any business entity or bank, financial
5 institution or any other entity existing as of the effective date of
6 this act, including, without limitation, any guarantee extended by
7 the Oklahoma Capital Investment Board and any assignment of any
8 third-party commitments to purchase, and proceeds released from the
9 sale of, tax credits, all of which shall remain in full force and
10 effect.

11 SECTION 5. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
17 04/11/2012 - DO PASS, As Amended.

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