

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL 1159

6 By: Adelson and (Mazzei) of the
7 Senate

8 and

9 Sears of the House

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to the Oklahoma Capital Formation
12 Act; amending 74 O.S. 2011, Sections 5085.7 and
13 5085.8, which relate to tax credits and capital
14 investment; modifying time period during which, and
15 circumstances under which, specified credits may be
16 exercised; modifying application of certain limits on
17 sale of credits; providing exceptions to specified
18 powers and duties of Oklahoma Capital Investment
19 Board; limiting ability of Board or specified
20 entities to enter into certain contracts or modify
21 certain agreements related to investments or
22 guarantees for repayment of obligations; requiring
23 payment of specified funds to General Revenue Fund
24 during specified time period; providing for effect of
enactment of certain provisions; providing for
codification; and declaring an emergency.

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

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

Section 5085.7. A. The State of Oklahoma hereby issues tax
credits that may be used to reduce the tax liability of a person,

1 firm or corporation if such liability is imposed pursuant to the
2 provisions of Section 2355 of Title 68 of the Oklahoma Statutes or
3 Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax
4 credits against liabilities imposed pursuant to Section 624 of Title
5 36 of the Oklahoma Statutes shall be limited to the amount that
6 would otherwise be collected and allocated to the General Revenue
7 Fund of the State Treasury. Tax credits issued and transferred to
8 the Oklahoma Development Finance Authority pursuant to the
9 provisions of this section and prior to ~~the effective date of this~~
10 ~~act~~ July 1, 1991, are hereby transferred to the Oklahoma Capital
11 Investment Board, created pursuant to the provisions of ~~this act~~ the
12 Oklahoma Capital Formation Act. The total amount of tax credits
13 that are hereby issued, or are transferred pursuant to this section
14 to the Board, is One Hundred Million Dollars (\$100,000,000.00). The
15 credits shall be freely transferable to subsequent transferees;
16 however, no such tax credit shall be exercisable before July 1,
17 1990, nor, except as otherwise provided by subsection B of this
18 section, after July 1, 2015 2020.

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

1 contractual commitment or by any person or entity having obtained
2 tax credits from a person or entity having made such a contractual
3 commitment or by any subsequent transferee if such tax credit
4 transfer occurred prior to the effective date of this act.

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

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

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

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

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

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

15 ~~D.~~ I. The Board may pay a fee in connection with the purchase
16 by the Board of an option or other agreement pursuant to which a
17 transfer of tax credits authorized by ~~this act~~ the Oklahoma Capital
18 Formation Act may be made.

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

1 K. The Board may employ such persons as may be required for the
2 proper implementation of ~~this act~~ the Oklahoma Capital Formation
3 Act, the management of its assets, or the performance of any
4 function authorized or required by ~~this act~~ the Oklahoma Capital
5 Formation Act or necessary for the accomplishment of any such
6 function. Such persons shall be selected by the Board based upon
7 outstanding knowledge and leadership in the field for which the
8 person performs services for the Board.

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

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

1 commonly used in professional portfolio management as the Board may
2 deem appropriate.

3 B. The Except as otherwise provided by subsections F and G of
4 this section, the Board shall have the power to extend a guarantee
5 in the form of a put option or such other method as selected by the
6 Board. Guarantees may extend to principal plus interest over the
7 term of the guarantee at a rate set by Board resolution from time to
8 time. Guarantees in whatever form negotiated by the Board may be
9 made for any period of time, but no term shall expire prior to
10 January 1, 1992. The Board may charge a reasonable fee for costs
11 and the fair compensation of risk associated with its guarantee.
12 The guarantees extended by the Board shall in no way be an
13 obligation of the state and may be restricted to specific funds or
14 assets of the Board; provided, however, proceeds from the sale of
15 any tax credits shall be sufficient to meet contractual guarantee
16 obligations of the Board. The Board shall have the right to
17 contract freely to protect the interests of the State of Oklahoma.
18 The Board shall ensure that at least Two Dollars (\$2.00) will be
19 invested in Oklahoma businesses or projects for every One Dollar
20 (\$1.00) of principal guaranteed by the Board.

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

3 D. ~~The~~ Except as otherwise provided by subsections F and G of
4 this section, the Board shall have the power to make any contract,
5 execute any document, perform any act or enter into any financial or
6 other transaction necessary in order to carry out its mission. The
7 Board may employ such persons as may be required for the performance
8 of any function authorized or required by ~~this act~~ the Oklahoma
9 Capital Formation Act or necessary for the accomplishment of any
10 such function. Such persons shall be selected based upon
11 outstanding knowledge and leadership in the field for which the
12 person performs services for the Board. In selecting such persons,
13 the Board shall hire persons who meet standards applicable to
14 persons responsible for investment of equity and near-equity
15 securities.

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

1 F. On and after the effective date of this act, except for the
2 investment of funds required by provisions in a contract executed by
3 the Board or by any subsidiary or affiliate of the Board prior to
4 the effective date of this act, or executed by an entity that was
5 not a subsidiary or affiliate of the Board at the time such contract
6 was executed but which became a subsidiary or affiliate of the Board
7 subsequent to the execution of such contract, but prior to the
8 effective date of this act, neither the Board nor any entity which
9 is a subsidiary or affiliate of the Board nor any entity which is
10 controlled either directly or indirectly by the Board or which acts
11 under the authority of or pursuant to the direction of the Board
12 shall:

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

21 2. Modify any agreement executed prior to the effective date of
22 this act by the Board or executed by any subsidiary or affiliate of
23 the Board or executed by any entity that was not a subsidiary or
24 affiliate of the Board at the time such contract was executed, but

1 which subsequently became a subsidiary or affiliate, in any manner
2 that would have the effect of increasing the amount of any
3 contractual commitment to make an investment of funds in a general
4 or limited partnership, corporation, limited liability company,
5 private equity or hedge fund or any other lawfully recognized
6 entity.

7 G. On and after the effective date of this act, except for the
8 use of funds required by provisions in a contract executed by the
9 Board or by any subsidiary or affiliate of the Board prior to the
10 effective date of this act, or executed by an entity that was not a
11 subsidiary or affiliate of the Board at the time such contract was
12 executed but which became a subsidiary or affiliate of the Board
13 subsequent to the execution of such contract, but prior to the
14 effective date of this act, neither the Board nor any entity which
15 is a subsidiary or affiliate of the Board nor any entity which is
16 controlled either directly or indirectly by the Board or which acts
17 under the authority of or pursuant to the direction of the Board
18 shall:

19 1. Enter into any contract for the purpose of guaranteeing, in
20 whole or in part, the repayment of obligations owed by a business
21 entity, other than a subsidiary of the Board, in connection with a
22 loan of money from a bank, financial institution or any other
23 entity; or

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1 2. Modify any contract described by paragraph 1 of this
2 subsection executed prior to the effective date of this act by the
3 Board or executed by any subsidiary or affiliate of the Board or
4 executed by any entity that was not a subsidiary or affiliate of the
5 Board at the time such contract was executed, but which subsequently
6 became a subsidiary or affiliate, in a manner that would increase
7 any existing obligation of the Board or its subsidiary or affiliate
8 or extend the term of any such contract.

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

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

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

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

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

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