

1 **SENATE FLOOR VERSION**

2 March 1, 2017

3 **AS AMENDED**

4
5
6 SENATE BILL NO. 171

By: Newberry

7 **[Oklahoma Capital Formation Act - capital investment**
8 **and tax credits - Oklahoma Capital Investment Board -**
9 **Oklahoma Futures - tax credits returned to state -**
10 **effective date]**

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 74 O.S. 2011, Section 5085.4, is
14 amended to read as follows:

15 Section 5085.4. In order to fulfill its mission as mobilizer of
16 equity and near-equity capital, the Oklahoma Capital Investment
17 Board shall ~~be subject to the policy development of Oklahoma~~
18 ~~Futures. The Oklahoma Capital Investment Board shall~~ develop an
19 annual business plan for the Board. ~~The business plan shall be~~
20 ~~submitted to Oklahoma Futures for its approval and shall be included~~
21 ~~in the annual report of Oklahoma Futures. Oklahoma Futures shall~~
22 ~~review the business plan and the annual report of the Board to~~
23 ~~ensure its consistency with the goals of the state's recurring five-~~
24 ~~year economic development plan.~~ The Board shall distribute copies
of the business plan by such means that will make it widely
available to the members of the Legislature, communities, firms and

1 local economic development managers throughout this state. ~~Oklahoma~~
2 ~~Futures shall not be involved in the day-to-day administration of~~
3 ~~the Board.~~

4 SECTION 2. AMENDATORY 74 O.S. 2011, Section 5085.7, as
5 amended by Section 1, Chapter 361, O.S.L. 2012 (74 O.S. Supp. 2016,
6 Section 5085.7), is amended to read as follows:

7 Section 5085.7. A. The State of Oklahoma hereby issues tax
8 credits that may be used to reduce the tax liability of a person,
9 firm or corporation if such liability is imposed pursuant to the
10 provisions of Section 2355 of Title 68 of the Oklahoma Statutes or
11 Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax
12 credits against liabilities imposed pursuant to Section 624 of Title
13 36 of the Oklahoma Statutes shall be limited to the amount that
14 would otherwise be collected and allocated to the General Revenue
15 Fund of the State Treasury. Tax credits issued and transferred to
16 the Oklahoma Development Finance Authority pursuant to the
17 provisions of this section and prior to July 1, 1991, are hereby
18 transferred to the Oklahoma Capital Investment Board, created
19 pursuant to the provisions of the Oklahoma Capital Formation Act.
20 ~~The~~ Prior to the effective date of this act, the total amount of tax
21 credits ~~that are hereby~~ issued, or ~~are~~ transferred pursuant to this
22 section to the Board, is One Hundred Million Dollars
23 (\$100,000,000.00). On the effective date of this act, Nine Million
24 Eighty-five Thousand Dollars (\$9,085,000.00) of such credits shall

1 be returned to the state and the total amount of tax credits issued
2 shall be limited to Sixty Million Dollars (\$60,000,000.00). The
3 credits shall be freely transferable to subsequent transferees;
4 however, no such tax credit shall be exercisable before July 1,
5 1990, nor, except as otherwise provided by subsection B of this
6 section, after ~~July 1, 2020~~ July 1, 2035.

7 B. Tax credits may be exercised after ~~July 1, 2020~~ July 1,
8 2035, if such tax credits were purchased or were agreed to be
9 purchased based upon a contractual commitment to the Board made by a
10 person or entity pursuant to an agreement originally entered into no
11 later than ~~December 31, 1995~~ July 1, 2035. Any such credits may be
12 exercised until fully utilized by the person or entity having
13 entered into such contractual commitment or by any person or entity
14 having obtained tax credits from a person or entity having made such
15 a contractual commitment or by any subsequent transferee ~~if such tax~~
16 ~~credit transfer occurred prior to the effective date of this act.~~

17 C. The Board shall not transfer tax credits except in
18 conjunction with a legitimate call on a Board guarantee. The Board
19 shall immediately notify the President Pro Tempore of the Senate,
20 the Speaker of the House of Representatives and the Governor in
21 writing if any tax credit is transferred in conjunction with a
22 legitimate call on a Board guarantee; provided, the Board shall not
23 be required to make such notification for transfers to subsequent
24 transferees.

1 D. The Board shall determine the amount of individual tax
2 credits to be transferred pursuant to the Oklahoma Capital Formation
3 Act and may negotiate for sale of such credits subject only to the
4 limits imposed by the Oklahoma Capital Formation Act, ~~including the~~
5 ~~provisions of subsections F and G of Section 5085.8 of this title.~~

6 E. ~~The~~ After the effective date of this act, the Board shall
7 ensure that no more than ~~Twenty Million Dollars (\$20,000,000.00)~~
8 Twelve Million Dollars (\$12,000,000.00) in tax credits has been
9 transferred which may be claimed and used to reduce the tax
10 otherwise imposed by Section 2355 of Title 68 of the Oklahoma
11 Statutes or Section 624 of Title 36 of the Oklahoma Statutes for any
12 one (1) fiscal year.

13 F. The Board shall clearly indicate upon the face of the
14 certificate or other document transferring the tax credit the
15 principal amount of the tax credit and the taxable year or years for
16 which the credit may be claimed.

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

19 H. The Board shall, in conjunction with the Oklahoma Tax
20 Commission, develop a system for registration of any tax credits
21 issued or transferred pursuant to the Oklahoma Capital Formation Act
22 and a system of certificates that permits verification that any tax
23 credit claimed upon a tax return is validly issued, properly taken
24 in the year of claim and that any transfers of the tax credit are

1 made in accordance with the requirements of the Oklahoma Capital
2 Formation Act.

3 I. The Board may pay a fee in connection with the purchase by
4 the Board of an option or other agreement pursuant to which a
5 transfer of tax credits authorized by the Oklahoma Capital Formation
6 Act may be made.

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

13 K. The Board may employ such persons as may be required for the
14 proper implementation of the Oklahoma Capital Formation Act, the
15 management of its assets, or the performance of any function
16 authorized or required by the Oklahoma Capital Formation Act or
17 necessary for the accomplishment of any such function. Such persons
18 shall be selected by the Board based upon outstanding knowledge and
19 leadership in the field for which the person performs services for
20 the Board.

21 SECTION 3. AMENDATORY 74 O.S. 2011, Section 5085.8, as
22 amended by Section 2, Chapter 361, O.S.L. 2012 (74 O.S. Supp. 2016,
23 Section 5085.8), is amended to read as follows:
24

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

16 B. ~~Except as otherwise provided by subsections F and G of this~~
17 ~~section, the~~ The Board shall have the power to extend a guarantee in
18 the form of a put option or such other method as selected by the
19 Board. Guarantees may extend to principal plus interest over the
20 term of the guarantee at a rate set by Board resolution from time to
21 time. Guarantees in whatever form negotiated by the Board may be
22 made for any period of time, but no term shall expire prior to
23 January 1, 1992. The Board may charge a reasonable fee for costs
24 and the fair compensation of risk associated with its guarantee.

1 The guarantees extended by the Board shall in no way be an
2 obligation of the state and may be restricted to specific funds or
3 assets of the Board; provided, however, proceeds from the sale of
4 any tax credits shall be sufficient to meet contractual guarantee
5 obligations of the Board. The Board shall have the right to
6 contract freely to protect the interests of the State of Oklahoma.
7 The Board shall ensure that at least ~~Two Dollars (\$2.00)~~ Three
8 Dollars (\$3.00) of equity or near equity capital will be invested in
9 Oklahoma businesses or projects for every One Dollar (\$1.00) of
10 ~~principal-guaranteed~~ tax credits transferred by the Board.

11 C. If the Board purchases any security pursuant to an agreement
12 with an investor group, the Board shall acquire such securities and
13 may invest, manage, transfer or dispose of such securities in
14 accordance with policies for management of assets adopted by the
15 Board.

16 D. ~~Except as otherwise provided by subsections F and G of this~~
17 ~~section, the~~ The Board shall have the power to make any contract,
18 execute any document, perform any act or enter into any financial or
19 other transaction necessary in order to carry out its mission. The
20 Board may employ such persons as may be required for the performance
21 of any function authorized or required by the Oklahoma Capital
22 Formation Act or necessary for the accomplishment of any such
23 function. Such persons shall be selected based upon outstanding
24 knowledge and leadership in the field for which the person performs

1 services for the Board. In selecting such persons, the Board shall
2 hire persons who meet standards applicable to persons responsible
3 for investment of equity and near-equity securities.

4 E. In carrying out the mission of the Board as authorized in
5 the Oklahoma Capital Formation Act, neither the Board nor its
6 officers, directors or employees shall be considered to be broker-
7 dealers, agents, investment advisors or investment adviser
8 representatives under Title 71 of the Oklahoma Statutes. The tax
9 credits issued or transferred pursuant to the Oklahoma Capital
10 Formation Act and Section 2357.7 of Title 68 of the Oklahoma
11 Statutes shall not be considered to be securities under Title 71 of
12 the Oklahoma Statutes.

13 ~~F. On and after the effective date of this act, except for the~~
14 ~~investment of funds required by provisions in a contract executed by~~
15 ~~the Board or by any subsidiary or affiliate of the Board prior to~~
16 ~~the effective date of this act, or executed by an entity that was~~
17 ~~not a subsidiary or affiliate of the Board at the time such contract~~
18 ~~was executed but which became a subsidiary or affiliate of the Board~~
19 ~~subsequent to the execution of such contract, but prior to the~~
20 ~~effective date of this act, neither the Board nor any entity which~~
21 ~~is a subsidiary or affiliate of the Board nor any entity which is~~
22 ~~controlled either directly or indirectly by the Board or which acts~~
23 ~~under the authority of or pursuant to the direction of the Board~~
24 ~~shall:~~

1 ~~1. Enter into any contract authorizing or requiring the~~
2 ~~investment of any funds obtained by the Board, or commitment binding~~
3 ~~the Board to make any investment of any funds obtained by the Board,~~
4 ~~or the investment of any funds obtained by a subsidiary, affiliate~~
5 ~~or any entity under the direct or indirect control of the Board, in~~
6 ~~any corporation, general partnership, limited partnership, limited~~
7 ~~liability company, private equity or hedge fund or other lawfully~~
8 ~~recognized business entity; or~~

9 ~~2. Modify any agreement executed prior to the effective date of~~
10 ~~this act by the Board or executed by any subsidiary or affiliate of~~
11 ~~the Board or executed by any entity that was not a subsidiary or~~
12 ~~affiliate of the Board at the time such contract was executed, but~~
13 ~~which subsequently became a subsidiary or affiliate, in any manner~~
14 ~~that would have the effect of increasing the amount of any~~
15 ~~contractual commitment to make an investment of funds in a general~~
16 ~~or limited partnership, corporation, limited liability company,~~
17 ~~private equity or hedge fund or any other lawfully recognized~~
18 ~~entity.~~

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

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

7 ~~1. Enter into any contract for the purpose of guaranteeing, in~~
8 ~~whole or in part, the repayment of obligations owed by a business~~
9 ~~entity, other than a subsidiary of the Board, in connection with a~~
10 ~~loan of money from a bank, financial institution or any other~~
11 ~~entity; or~~

12 ~~2. Modify any contract described by paragraph 1 of this~~
13 ~~subsection executed prior to the effective date of this act by the~~
14 ~~Board or executed by any subsidiary or affiliate of the Board or~~
15 ~~executed by any entity that was not a subsidiary or affiliate of the~~
16 ~~Board at the time such contract was executed, but which subsequently~~
17 ~~became a subsidiary or affiliate, in a manner that would increase~~
18 ~~any existing obligation of the Board or its subsidiary or affiliate~~
19 ~~or extend the term of any such contract.~~

20 SECTION 4. AMENDATORY 74 O.S. 2011, Section 5085.9, is
21 amended to read as follows:

22 Section 5085.9. A. The Board shall publish a separate annual
23 report in conjunction with its annual audit and present the report
24 to the Governor, and the members of the Legislature ~~and Oklahoma~~

1 ~~Futures~~. The annual report shall review the mission of the Board
2 and programs implemented according to objective measures set forth
3 in the Board's business plan. The Board shall distribute this
4 annual report by such means that will make it available to the
5 financial community.

6 B. ~~Seven (7) years after the Board has begun operations,~~
7 ~~Oklahoma Futures shall~~ On or before December 31, 2021, and at least
8 once every three (3) years thereafter, the Board shall engage a
9 qualified, independent firm to perform an impact analysis intended
10 to review, analyze and evaluate the extent to which the Board has
11 achieved its statutory mission. The ~~evaluation~~ impact analysis
12 shall include, but not be limited to, an examination of quantified
13 results of the Board's programs and plans in terms of equity and
14 near equity capital invested, jobs created and payroll generated in
15 Oklahoma as a result of Board programs.

16 SECTION 5. AMENDATORY Section 3, Chapter 361, O.S.L.
17 2012 (74 O.S. Supp. 2016, Section 5085.15), is amended to read as
18 follows:

19 Section 5085.15. Within thirty (30) days after the Oklahoma
20 Capital Investment Board ~~or any subsidiary or affiliate of the Board~~
21 has ceased to exist and has made payment of any remaining expense or
22 obligation created by the Board or by ~~the~~ any subsidiary or
23 affiliate of the Board, pursuant to the terms of any promissory
24 note, loan agreement, guaranty agreement, investment agreement or

1 other contract or agreement, any remaining monies paid to either the
2 Board or any subsidiary or affiliate of the Board ~~pursuant to the~~
3 ~~terms of an agreement or contract entered into prior to the~~
4 ~~effective date of this act~~ shall be paid ~~by the Board or by its~~
5 ~~subsidiary or affiliate~~ to the General Revenue Fund of the State
6 Treasury.

7 SECTION 6. This act shall become effective November 1, 2017.

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
9 March 1, 2017 - DO PASS AS AMENDED
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