

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1768

By: Howard

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; creating the Oklahoma Rural Jobs Act; defining terms; establishing requirements; establishing application process; providing for a tax credit; establishing an authorization amount limit; establishing investment requirements; allowing for lapse in certification creating a credit; allowing for transfer of credit; allowing for recapturing of credits; determining how recaptured credits are to be allocated; creating a program exit process; creating ownership limitations; creating reporting requirements; establishing a sunset date; providing for codification; and providing an effective date.

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 3930 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Rural Jobs Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3931 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under the common control with another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority of voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law;

2. "Applicable percentage" means zero percent (0%) for the first two credit allowance dates, and fifteen percent (15%) for the next four credit allowance dates;

3. "Capital investment" means any equity investment in a rural fund by a rural investor which:

- a. is acquired after the effective date of this act at its original issuance solely in exchange for cash,
- b. has one hundred percent (100%) of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the third anniversary of the initial credit allowance date, and

1 c. is designated by the rural fund as a capital
2 investment under this act and is certified by the
3 Department under the provisions of Section 3 of this
4 act. This shall include any capital investment that
5 does not meet the provisions of paragraph 1 of
6 subsection A of Section 3 of this act, if such
7 investment was a capital investment in the hands of a
8 prior holder;

9 4. "Credit allowance date" means the date on which the
10 Department certifies a rural fund's capital investment and each of
11 the five anniversary dates of such date thereafter;

12 5. "Department" means the Oklahoma Department of Commerce;

13 6. "Eligible business" means a business that, at the time of
14 the initial qualified investment in the business:

15 a. has fewer than two hundred fifty employees, and

16 b. has its principal business operations in the state.

17 Any business which is classified as an eligible business at the
18 time of the initial investment in such business by a rural fund
19 shall remain classified as an eligible business and may receive
20 follow-on investments from any rural fund, and such follow-on
21 investments shall be qualified investments even though such business
22 may not meet the definition of an eligible business at the time of
23 such follow-on investment;

1 7. "Principal business operations" means the location where at
2 least sixty percent (60%) of a business's employees work or where
3 employees who are paid at least sixty percent (60%) of such
4 business's payroll work. A business that has agreed to relocate
5 employees using the proceeds of a qualified investment to establish
6 its principal business operations in a new location shall be deemed
7 to have its principal business operations in such new location if it
8 satisfied the requirements of this paragraph no later than one
9 hundred eighty (180) days after receiving a qualified investment;

10 8. "Purchase price" means the amount paid to the rural fund
11 that issues a capital investment which shall not exceed the amount
12 of capital investment authority certified under the provisions of
13 Section 3 of this act;

14 9. "Qualified investment" means any investment in an eligible
15 business or any loan to an eligible business with a stated maturity
16 date of at least one (1) year after the date of issuance, excluding
17 revolving lines of credit and senior-secured debt unless the chief
18 executive or similar officer of the eligible business certifies that
19 the eligible business sought and was denied similar financing from a
20 depository institution, by a rural fund; provided that, with respect
21 to any one eligible business, the maximum amount of investments made
22 in such business by one or more rural funds, on a collective basis
23 with all of the businesses' affiliates, with the proceeds of the
24 capital investments, shall be the greater of twenty percent (20%) of

1 the rural fund's capital investment authority or Six Million Five
2 Hundred Thousand Dollars (\$6,500,000.00), exclusive of investments
3 made with repaid or redeemed investments or interest or profits
4 realized thereon;

5 10. "Rural area" means any county of this state that has a
6 population of less than seventy-five thousand (75,000) or any city
7 or town of this state that has a population not to exceed seven
8 thousand (7,000) according to the 2020 Federal Decennial Census of
9 the United States;

10 11. "Rural fund" means an entity certified by the Department
11 under the provisions of Section 3 of this act;

12 12. "Rural investor" means an entity that makes a capital
13 investment in a rural fund;

14 13. "Senior-secured debt" means any loan that is secured by a
15 first mortgage on real estate with a loan-to-value ratio of less
16 than eighty percent (80%); and

17 14. "State tax liability" means any liability incurred by any
18 entity subject to the state income tax imposed under Title 68 of the
19 Oklahoma Statutes or an insurance company paying an annual tax on
20 its gross premium receipts including retaliatory tax, or other
21 financial institution paying taxes to the state or any political
22 subdivision of the state under provisions of Title 68 or Title 19 of
23 the Oklahoma Statutes or an express company which pays an annual tax
24 on its gross receipts in the state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3932 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A rural fund that seeks to have an equity investment certified as a capital investment eligible for credits authorized under the provisions of this act shall apply to the Department. The Department shall begin accepting applications within ninety (90) days of the effective date of this act. The application shall include:

1. The amount of capital investment requested;

2. A copy of the applicant's or an affiliate of the applicant's licenses as a rural business investment company under 7 U.S.C., Section 2009cc or as a small business investment company under 15 U.S.C., Section 681, and a certificate executed by an executive officer of the applicant attesting that such license remains in effect and has not been revoked;

3. Evidence that, as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least One Hundred Million Dollars (\$100,000,000.00) in nonpublic companies located in counties within the United States with a population of less than seventy-five thousand (75,000) according to the 2010 Federal Decennial Census of the United States;

4. A business plan that includes a revenue-impact assessment projecting state and local tax revenue to be generated by the

1 applicant's proposed qualified investments, prepared by a nationally
2 recognized, third-party, independent economic forecasting firm using
3 a dynamic economic forecasting model that analyzes the applicant's
4 business plan over the ten (10) years following the date the
5 application is submitted to the Department. Such plan shall include
6 an estimate of the number of jobs created and jobs retained in this
7 state as a result of the applicant's qualified investments; and

8 5. A nonrefundable application fee of Five Thousand Dollars
9 (\$5,000.00) payable to the Department.

10 B. Within thirty (30) days after the receipt of a completed
11 application, the Department shall grant or deny the application in
12 full or in part. The Department shall deny the application if:

13 1. The applicant does not satisfy all the criteria provided
14 under subsection A of this section;

15 2. The revenue-impact assessment submitted with the application
16 does not demonstrate that the applicant's business plan will result
17 in a positive fiscal impact on the state over a ten-year period that
18 exceeds the cumulative amount of tax credits that would be issued to
19 the applicant if the application was approved; or

20 3. The Department has already approved the maximum amount of
21 capital investment authority under Section 4 of this act.

22 C. If the Department denies any part of the application, it
23 shall inform the applicant of the grounds for such denial. If the
24 applicant provides any additional information required by the

1 Department or otherwise completes its application within fifteen
2 (15) days of the notice of denial, the application shall be
3 considered complete as of the original date of submission. If the
4 applicant fails to provide the information or fails to complete its
5 application within the fifteen-day period, the application shall
6 remain denied and must be resubmitted with a new submission date and
7 a new application fee.

8 D. Upon approval of an application, the Department shall
9 certify the proposed equity investment as a capital investment
10 eligible for credits under this act, subject to limitations laid out
11 in Section 4 of this act. The Department shall provide written
12 notice of the certification to the applicant which shall include the
13 amount of the applicant's capital investment authority. The
14 Department shall certify capital investments in the order that the
15 application is received by the Department. Applications received on
16 the same day shall be deemed to have been received simultaneously.
17 For applications that are complete and received on the same day, the
18 Department shall certify applications in proportionate percentages
19 based upon the ratio of the amount of capital investment authority
20 requested in all applications.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3933 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. The Department shall certify capital investment authority
2 under the provisions of this act in amounts that would not authorize
3 more than Fifteen Million Dollars (\$15,000,000.00) in state tax
4 credits to be claimed against state tax liability in any calendar
5 year, excluding any credit amounts carried forward as provided under
6 subsection A of Section 5 of this act. Within ninety (90) days of
7 the applicant receiving notice of certification, the rural fund
8 shall issue the capital investment to, and receive cash in the
9 amount of the certified amount from a rural investor. At least ten
10 percent (10%) of the rural investor's capital investment shall be
11 composed of capital raised by the rural investor directly or
12 indirectly from sources including directors, members, employees,
13 officers, and affiliates of the rural investor, other than the
14 amount invested by the allocatee claiming the tax credits in
15 exchange for such allocation of tax credits. The rural fund shall
16 provide the Department with evidence of the receipt of the cash
17 investment within ninety-five (95) days of the applicant receiving
18 notice of certification.

19 B. If the rural fund does not receive the cash investment and
20 issue the capital investment within such time period following
21 receipt of the certificate notice, the certification shall lapse and
22 the rural fund shall not issue the capital investment without
23 reapplying to the Department for certification. Lapsed
24 certifications shall revert to the Department and shall be reissued

1 pro rata to applicants whose capital investment allocations were
2 reduced in accordance with the application process provided under
3 subsection D of Section 3 of this act.

4 C. A rural fund, before making a qualified investment, may
5 request from the Department a written opinion as to whether the
6 business in which it proposes to invest is an eligible business.
7 The Department, no later than fifteen (15) business day after the
8 date of receipt of such request, shall notify the rural fund of its
9 determination. If the Department fails to notify the rural fund of
10 its determination by the twentieth business day, the business in
11 which the rural fund proposes to invest shall be deemed an eligible
12 business.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3934 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Upon making a capital investment in a rural fund, a rural
17 investor shall have a vested right to a credit against such entity's
18 state tax liability that may be utilized on each credit allowance
19 date of such capital investment in an amount equal to the applicable
20 percentage for such credit allowance date multiplied by the purchase
21 price paid to the rural fund for the capital investment. The amount
22 of the credit claimed by a rural investor shall not exceed the
23 amount of such entity's state tax liability for the tax year for
24 which the credit is claimed. Any amount of credit that a rural

1 investor is prohibited from claiming in a tax year as a result of
2 this section may be carried forward for use in any of the five (5)
3 subsequent tax years, but shall not be carried back to prior tax
4 years. It is the intent of this act that a rural investor claiming
5 a credit under this act is not required to pay any additional tax
6 that may arise as a result of claiming such credit.

7 B. No credit claimed under the provisions of this act shall be
8 refundable or saleable on the open market. Credits earned by or
9 allocated to a partnership, limited liability company, or S-
10 corporation may be allocated to the partners, members, or
11 shareholders of such entity for their direct use in accordance with
12 the provisions of any agreement among such partners, members, or
13 shareholders, and a rural fund shall notify the Department of the
14 names of the entities that are eligible to utilize transfer of a
15 capital investment upon such allocation, change, or transfer. Such
16 allocation shall not be considered a sale for the purpose of this
17 section.

18 C. The Department may recapture credits from a taxpayer that
19 claimed a credit authorized under this section if:

20 1. The rural fund does not invest sixty percent (60%) of its
21 capital investment authority in qualified investments in this state
22 within two (2) years of the credit allowance date, and one hundred
23 percent (100%) of its capital investment authority in qualified
24 investments in this state within three (3) years of the credit

1 allowance date; provided, that at least seventy percent (70%) of
2 these initial qualified investments must be made in eligible
3 businesses located in rural areas;

4 2. The rural fund fails to maintain qualified investments equal
5 to ninety percent (90%) of its capital investment authority from the
6 third anniversary until the sixth anniversary of the credit
7 allowance date, with seventy percent (70%) of such investments
8 maintained in eligible businesses located in rural areas. For each
9 year the rural fund fails to maintain such investments, the
10 Department may recapture an amount of such year's allowed credits
11 equal to the percentage difference between ninety percent (90%) of a
12 rural fund's capital investment authority and the actual amount of
13 qualified investments maintained for such year. For the purposes of
14 this subsection, a qualified investment is considered even if the
15 qualified investment was sold or repaid so long as the rural fund
16 reinvests an amount equal to the capital returned or recovered or
17 repaid by the rural fund from the original investment, exclusive of
18 any profits realized, in other qualified investments in this state
19 within twelve (12) months of receipt of such capital. Amounts
20 received periodically by a rural fund shall be treated as
21 continually invested in qualified investments if the amounts are
22 reinvested in one or more qualified investments by the end of the
23 following calendar year. A rural fund shall not be required to
24 reinvest capital returned from qualified investments after the fifth

1 anniversary of the credit allowance date, and such qualified
2 investments shall be considered held continuously by the rural fund
3 through the sixth anniversary of the credit allowance date;

4 3. Prior to the earlier of exiting the program in accordance
5 with this act or thirty (30) days after the sixth anniversary of the
6 credit allowance date, the rural fund makes a distribution or
7 payment that results in the rural fund having less than one hundred
8 percent (100%) of its capital investment authority invested in
9 qualified investments in the state or held in cash or other
10 marketable securities; or

11 4. The rural fund violates the provisions of Section 6 of this
12 act, in which case the Department may recapture an amount equal to
13 the amount of the rural fund's capital investment authority found to
14 be in violation of such provisions.

15 For the purposes of meeting and maintaining the objectives
16 established for investment in paragraphs 1 and 2 of this subsection,
17 a rural fund's qualified investments shall be multiplied by a factor
18 of one and one-quarter (1 1/4) in counties with less than thirty
19 thousand (30,000) in population and more than thirteen thousand
20 (13,000) in population and shall be multiplied by a factor of one
21 and one-half (1 1/2) in counties with a population of thirteen
22 thousand (13,000) or less.

23 D. Recaptured credits and related capital investment authority
24 shall revert to the Department and shall be reissued pro rata to

1 applicants whose capital investment allocations were reduced in
2 accordance with the application process provided under subsection D
3 of Section 3 of this act.

4 E. No recapture shall occur until the rural fund has been given
5 notice of noncompliance and afforded six (6) months from the date of
6 such notice to cure the noncompliance.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3935 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 No eligible business that receives a qualified investment under
11 the provisions of this act, or any affiliates or such eligible
12 business, shall directly or indirectly:

13 1. Own or have the right to acquire an ownership interest in a
14 rural fund or member or affiliate of a rural fund including, but not
15 limited to, a holder of a capital investment issued by a rural fund;
16 or

17 2. Loan to or invest in a rural fund or any member or affiliate
18 of a rural fund including, but not limited to, a holder of capital
19 investment issued by a rural fund, where the proceeds of such loan
20 or investment are directly or indirectly used to fund or refinance
21 the purchase of capital investments under this act.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3936 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Rural funds shall submit a report to the Department within
2 the first fifteen (15) business days after the second and third
3 anniversary of the initial credit allowance date. The report
4 following the second anniversary shall provide documentation as to
5 the investment of sixty percent (60%) of the purchase price of such
6 capital investment in qualified investments. The report following
7 the third anniversary shall provide documentation as to the
8 investment of one hundred percent (100%) of the purchase price of
9 such capital investment in qualified investments. Unless previously
10 reported pursuant to this subsection, such reports shall also
11 include:

12 1. The name and location of each eligible business receiving a
13 qualified investment;

14 2. Bank statements of such rural fund evidencing each qualified
15 investment;

16 3. A copy of the written opinion of the Department, as provided
17 in subsection C of Section 4 of this act, or evidence that such
18 business was an eligible business at the time of such qualified
19 investment, as applicable;

20 4. The number of jobs created and jobs retained as a result of
21 each qualified investment;

22 5. The average salary of positions described in paragraph 4 of
23 this paragraph; and

24 6. Such other information as required by the Department.

1 B. For all subsequent years, rural funds shall submit an annual
2 report to the Department within ninety (90) days of the beginning of
3 the calendar year during the compliance period. The report shall
4 include, but is not limited to the following:

5 1. The number of jobs created and jobs retained as a result of
6 qualified investments;

7 2. The average annual salary of positions described in
8 paragraph 1 of this subsection; and

9 3. Such other information as required by the Department.

10 C. On or after the sixth anniversary of the credit allowance
11 date, a rural fund may apply to the Department to exit the program
12 and no longer be subject to the regulation hereunder. The
13 Department shall respond to the exit application within fifteen (15)
14 days of receipt. In evaluating the exit application, the fact that
15 no credits have been recaptured and that the rural fund has not
16 received a notice of recapture that has not been cured pursuant to
17 subsection E of Section 5 of this act shall be sufficient evidence
18 to prove that the rural fund is eligible for exit. The Department
19 shall not unreasonably deny an exit application submitted under this
20 section. If an exit application is denied, the notice shall include
21 the reasons for the determination.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3937 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 The Department shall accept no new applications for tax credits
2 authorized under this act after December 1, 2032.

3 SECTION 9. This act shall become effective November 1, 2022.

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