

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 760

By: Kirt and Hall of the Senate

and

Boatman of the House

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9 An Act relating to the Oklahoma Capital Investment
10 Board; amending 74 O.S. 2021, Sections 5085.5,
11 5085.6, 5085.8, 5085.10, 5085.11, 5085.12, 5085.14,
12 5085.15, and 5085.16, which relate to the Oklahoma
13 Capital Formation Act; modifying definition;
14 modifying reference; dissolving Board upon certain
15 date; transferring certain contracts and management
16 of certain investments to the Oklahoma Science and
17 Technology Research and Development Board; updating
18 statutory reference; updating statutory language; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 74 O.S. 2021, Section 5085.5, is
22 amended to read as follows:

23 Section 5085.5. For purposes of ~~this act~~ the Oklahoma Capital
24 Formation Act:

1. "Board" means the Oklahoma ~~Capital Investment Board~~ Science
and Technology Research and Development Board of the Oklahoma Center
for the Advancement of Science and Technology;

2. "Director" means any person who is a member of the Board;

1 3. "Equity capital" means capital invested in common or
2 preferred stock, royalty rights, limited partnership interests, and
3 any other securities or rights that evidence ownership in private
4 businesses;

5 4. "Investor group" means any individual, corporation,
6 partnership, or other lawfully organized entity;

7 5. "Near-equity capital" means capital invested in unsecured,
8 undersecured, subordinated, or convertible loans or debt securities;

9 6. "Persons" means individuals, corporations, partnerships, or
10 other lawfully organized entities;

11 7. "Put option" means a right or privilege to sell an amount of
12 a particular security or class of securities during a time period
13 ending on the expiration date of the option; and

14 8. "Tax credits" means tax credits available against
15 liabilities imposed by Section 2355 of Title 68 of the Oklahoma
16 Statutes or Section 624 of Title 36 of the Oklahoma Statutes and
17 issued or transferred pursuant to ~~this act~~ the Oklahoma Capital
18 Formation Act.

19 a. The tax credits issued or transferred pursuant to the
20 Oklahoma Capital Formation Act, upon election by the
21 purchaser at utilization, will be treated as a payment
22 or prepayment in lieu of tax imposed under Section
23 2355 of Title 68 of the Oklahoma Statutes;

1 b. Tax credits utilized pursuant to subparagraph a of
2 this paragraph shall be treated and may be claimed as
3 a payment of tax or estimated tax for the purposes of
4 and as defined in Sections 2375, 2385.9, and 2385.13
5 of Title 68 of the Oklahoma Statutes. Such tax
6 credits are further subject to the system developed in
7 conjunction with the Oklahoma Tax Commission as
8 required by subsection C of Section 5085.7 of this
9 title for registration and verification of the tax
10 credits. Taxpayers may rely upon the provisions of
11 the registration and verification system developed
12 pursuant to Section 5085.7 of this title.

13 SECTION 2. AMENDATORY 74 O.S. 2021, Section 5085.6, is
14 amended to read as follows:

15 Section 5085.6. A. ~~The~~ Until the effective date of this act,
16 the Oklahoma Capital Investment Board shall consist of five (5)
17 Directors who shall be appointed by the Governor with the advice and
18 consent of the Senate. Directors shall be selected based upon
19 outstanding knowledge and leadership and shall possess experience in
20 the management of investments similar in nature and in value to
21 those of the Board. Directors shall serve for a term of office of
22 five (5) years. Provided, the initial Board of Directors of the
23 Oklahoma Capital Investment Board shall consist of the trustees of
24 the trust certified as the Oklahoma Capital Investment Board

1 pursuant to the provisions of ~~Section 2 of this act~~ Section 5085.2
2 of this title and the Directors of the Oklahoma Capital Investment
3 Board who were appointed ~~pursuant to the provisions of Section~~
4 ~~5061.6 of Title 74 of the Oklahoma Statutes~~. Positions on the Board
5 of Directors held by trustees of such trust shall not be filled as
6 the terms of office for ~~said~~ the trustees expire. Positions on the
7 Board of Directors held by Directors of the Oklahoma Capital
8 Investment Board shall be filled by the Governor with the advice and
9 consent of the Senate as the terms of office for ~~said~~ the Directors
10 expire and in a manner to allow one member to rotate off of the
11 Board each year.

12 B. Annually, the Directors shall select a chairman to preside
13 at their meetings. The Directors shall have the authority to manage
14 the Oklahoma Capital Investment Board in accordance with the
15 requirements of ~~this act~~ the Oklahoma Capital Formation Act and its
16 trust indenture.

17 C. The meetings of the Directors shall be subject to the
18 Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the
19 Oklahoma Statutes, and the Oklahoma Open Records Act, Section 24A.1
20 et seq. of Title 51 of the Oklahoma Statutes. Any information
21 submitted to or compiled by the Oklahoma Capital Investment Board
22 with respect to the marketing plans, financial statements, trade
23 secrets, research concepts, methods or products, or any other
24 proprietary information of persons, firms, associations,

1 partnerships, agencies, corporations, or other entities shall be
2 confidential, except to the extent that the person or entity that
3 provided such information or that is the subject of such information
4 consents to disclosure. Executive sessions may be held to discuss
5 such materials if deemed necessary by the Directors.

6 D. A conflict of interest shall be deemed to exist in any
7 contractual relationship in which a Director of the Board, officer,
8 agent or employee or any for-profit firm or corporation in which
9 such Director, officer, agent, or employee or any member of his or
10 her immediate family is an officer, partner, or principal
11 stockholder, shall directly or indirectly buy or sell goods or
12 services to, or otherwise contract with the Board. Upon a showing
13 thereof, such Director, officer, agent, or employee shall be subject
14 to removal and such contract shall be deemed unenforceable as
15 against the Board unless the records of the Board shall reflect that
16 such Director, officer, agent, or employee fully and publicly
17 disclosed all such interest or interests, and unless such
18 contractual relationship shall have been secured by competitive
19 bidding following a public invitation to bid. If a Director,
20 officer, agent, or employee holds such an interest, he or she shall
21 refrain from any further official involvement in regard to such
22 contract or agreement, from voting on any matter pertaining to such
23 contract or agreement, and from communicating with other Board
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1 members, officers, agents, or employees concerning ~~said~~ the contract
2 or agreement.

3 E. Bonds issued by the Oklahoma Capital Investment Board shall
4 be subject to oversight pursuant to the Oklahoma Bond Oversight and
5 Reform Act, Section 695.1 et seq. of Title 62 of the Oklahoma
6 Statutes.

7 F. Upon the effective date of this act, the Oklahoma Capital
8 Investment Board shall be dissolved. Any contracts or agreements
9 executed by the Board or by any subsidiary or affiliate of the Board
10 and any investment of funds required by the provisions of a contract
11 executed by the Board or by any subsidiary or affiliate of the Board
12 shall be transferred to and managed by the Oklahoma Center for the
13 Advancement of Science and Technology.

14 SECTION 3. AMENDATORY 74 O.S. 2021, Section 5085.8, is
15 amended to read as follows:

16 Section 5085.8. A. Except as otherwise provided by subsections
17 F and G of this section, the Oklahoma ~~Capital Investment~~ Science and
18 Technology Research and Development Board shall have the power to
19 solicit proposals from qualified investor groups for investment of
20 capital in accordance with the requirements of the Oklahoma Capital
21 Formation Act. The Board shall establish criteria for selection of
22 persons, firms, corporations, or other entities deemed qualified to
23 generate capital for investment in a manner which will result in a
24 significant potential to create jobs and to diversify and stabilize

1 the economy of ~~the State of Oklahoma~~ this state. Such criteria
2 shall include the applicant's level of experience, quality of
3 management, investment philosophy and process, historical investment
4 performance, probability of success in fund raising, the amount and
5 timing of fees to be paid, and such other investment criteria as may
6 be commonly used in professional portfolio management as the Board
7 may deem appropriate.

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

3 C. If the Board purchases any security pursuant to an agreement
4 with an investor group, the Board shall acquire such securities and
5 may invest, manage, transfer, or dispose of such securities in
6 accordance with policies for management of assets adopted by the
7 Board.

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

21 E. In carrying out the mission of the Board as authorized in
22 the Oklahoma Capital Formation Act, neither the Board nor its
23 officers, directors, or employees shall be considered to be broker-
24 dealers, agents, investment advisors, or investment adviser

1 representatives under Title 71 of the Oklahoma Statutes. The tax
2 credits issued or transferred pursuant to the Oklahoma Capital
3 Formation Act and Section 2357.7 of Title 68 of the Oklahoma
4 Statutes shall not be considered to be securities under Title 71 of
5 the Oklahoma Statutes.

6 F. On and after ~~the effective date of this act~~ June 8, 2012,
7 except for the investment of funds required by provisions in a
8 contract executed by the Board or by any subsidiary or affiliate of
9 the Board prior to ~~the effective date of this act~~ June 8, 2012, or
10 executed by an entity that was not a subsidiary or affiliate of the
11 Board at the time such contract was executed but which became a
12 subsidiary or affiliate of the Board subsequent to the execution of
13 such contract, but prior to ~~the effective date of this act~~ June 8,
14 2012, neither the Board nor any entity which is a subsidiary or
15 affiliate of the Board nor any entity which is controlled either
16 directly or indirectly by the Board or which acts under the
17 authority of or pursuant to the direction of the Board shall:

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

3 2. Modify any agreement executed prior to ~~the effective date of~~
4 ~~this act~~ June 8, 2012, by the Board or executed by any subsidiary or
5 affiliate of the Board or executed by any entity that was not a
6 subsidiary or affiliate of the Board at the time such contract was
7 executed, but which subsequently became a subsidiary or affiliate,
8 in any manner that would have the effect of increasing the amount of
9 any contractual commitment to make an investment of funds in a
10 general or limited partnership, corporation, limited liability
11 company, private equity or hedge fund, or any other lawfully
12 recognized entity.

13 G. On and after ~~the effective date of this act~~ June 8, 2012,
14 except for the use of funds required by provisions in a contract
15 executed by the Board or by any subsidiary or affiliate of the Board
16 prior to ~~the effective date of this act~~ June 8, 2012, or executed by
17 an entity that was not a subsidiary or affiliate of the Board at the
18 time such contract was executed but which became a subsidiary or
19 affiliate of the Board subsequent to the execution of such contract,
20 but prior to ~~the effective date of this act~~ June 8, 2012, neither
21 the Board nor any entity which is a subsidiary or affiliate of the
22 Board nor any entity which is controlled either directly or
23 indirectly by the Board or which acts under the authority of or
24 pursuant to the direction of the Board shall:

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

6 2. Modify any contract described by paragraph 1 of this
7 subsection executed prior to ~~the effective date of this act~~ June 8,
8 2012, by the Board or executed by any subsidiary or affiliate of the
9 Board or executed by any entity that was not a subsidiary or
10 affiliate of the Board at the time such contract was executed, but
11 which subsequently became a subsidiary or affiliate, in a manner
12 that would increase any existing obligation of the Board or its
13 subsidiary or affiliate or extend the term of any such contract.

14 SECTION 4. AMENDATORY 74 O.S. 2021, Section 5085.10, is
15 amended to read as follows:

16 Section 5085.10. Notwithstanding other provisions of law, the
17 Oklahoma Science and Technology Research and Development Board or
18 any entity designated by the Board, shall have the authority to
19 expend funds to administer and operate the programs of the ~~Oklahoma~~
20 ~~Capital Investment~~ Board.

21 SECTION 5. AMENDATORY 74 O.S. 2021, Section 5085.11, is
22 amended to read as follows:

23 Section 5085.11. A. There is hereby created in the State
24 Treasury a revolving fund for the Oklahoma Department of Commerce to

1 be designated the "Oklahoma Capital Formation Revolving Fund". The
2 fund shall be a continuing fund, not subject to fiscal year
3 limitations, and shall consist of appropriated funds. All monies
4 accruing to the credit of ~~said~~ the fund are hereby appropriated and,
5 as authorized by the Oklahoma ~~Capital Investment~~ Science and
6 Technology Research and Development Board, shall be expended by the
7 Oklahoma Department of Commerce to perform the duties imposed upon
8 the ~~Oklahoma Capital Investment~~ Board by law. Expenditures of
9 appropriated funds from ~~said~~ the fund shall be made upon warrants
10 issued by the State Treasurer against claims filed as prescribed by
11 law with the Director of the Office of Management and Enterprise
12 Services for approval and payment.

13 B. On ~~the effective date of this act~~ July 1, 1991, any
14 unencumbered funds remaining in the Oklahoma Capital Investment
15 Board Revolving Fund shall be transferred to the credit of the
16 Oklahoma Capital Formation Revolving Fund. Any unexpended funds
17 remaining in the Oklahoma Capital Investment Board Revolving Fund
18 after November 15, 1991, shall be transferred to the credit of the
19 Oklahoma Capital Formation Revolving Fund.

20 SECTION 6. AMENDATORY 74 O.S. 2021, Section 5085.12, is
21 amended to read as follows:

22 Section 5085.12. Nothing contained herein is or shall be
23 construed as a restriction or limitation upon any powers which the
24 Oklahoma ~~Capital Investment~~ Science and Technology Research and

1 Development Board might otherwise have under any other law of this
2 state heretofore or hereafter enacted and the provisions of ~~this act~~
3 the Oklahoma Capital Formation Act are cumulative to such powers.

4 The provisions hereof do and shall be construed to provide a
5 complete, additional, and alternative method for the doing of the
6 things authorized and shall be regarded as supplemental and
7 additional to powers conferred by any other laws.

8 SECTION 7. AMENDATORY 74 O.S. 2021, Section 5085.14, is
9 amended to read as follows:

10 Section 5085.14. A. The Oklahoma ~~Capital Investment~~ Science
11 and Technology Research and Development Board may adopt rules,
12 policies, procedures, and regulatory and administrative measures
13 necessary to administer the programs of the Board or convenient for
14 the organization and internal management of Board responsibilities.

15 B. The level, timing, or degree of success of the ~~Oklahoma~~
16 ~~Capital Investment~~ Board in mobilizing or ensuring investment in
17 Oklahoma businesses or projects, accomplishing other economic
18 development objectives, or achieving any other statutory duty shall
19 not compromise, diminish, invalidate, or affect the enforceability
20 of any guarantee of the Board.

21 SECTION 8. AMENDATORY 74 O.S. 2021, Section 5085.15, is
22 amended to read as follows:

23 Section 5085.15. Within thirty (30) days after the Oklahoma
24 ~~Capital Investment~~ Science and Technology Research and Development

1 Board or any subsidiary or affiliate of the Board has made payment
2 of any remaining expense or obligation created by the Board or by
3 the subsidiary or affiliate, pursuant to the terms of any promissory
4 note, loan agreement, guaranty agreement, investment agreement, or
5 other contract or agreement, any remaining monies paid to either the
6 Board or any subsidiary or affiliate of the Board pursuant to the
7 terms of an agreement or contract entered into prior to ~~the~~
8 ~~effective date of this act~~ June 8, 2012, shall be paid by the Board
9 or by its subsidiary or affiliate to the General Revenue Fund of the
10 State Treasury.

11 SECTION 9. AMENDATORY 74 O.S. 2021, Section 5085.16, is
12 amended to read as follows:

13 Section 5085.16. None of the provisions of ~~this act~~ the
14 Oklahoma Capital Formation Act shall alter, amend, modify, affect,
15 diminish, or impair the enforceability of, or any obligation or
16 liability of the Oklahoma ~~Capital Investment~~ Science and Technology
17 Research and Development Board or any entity which is a subsidiary
18 or affiliate of the ~~Oklahoma Capital Investment~~ Board or any entity
19 which is controlled either directly or indirectly by the ~~Oklahoma~~
20 ~~Capital Investment~~ Board under any contract, agreement, guarantee,
21 or instrument entered into or delivered by such party with any
22 business entity or bank, financial institution, or any other entity
23 existing as of ~~the effective date of this act~~ June 8, 2012,
24 including, without limitation, any guarantee extended by the

1 ~~Oklahoma Capital Investment~~ Board and any assignment of any third-
2 party commitments to purchase, and proceeds released from the sale
3 of, tax credits, all of which shall remain in full force and effect.

4 SECTION 10. This act shall become effective November 1, 2023.

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6 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION AND
7 TECHNOLOGY, dated 04/04/2023 - DO PASS.
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