

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 171

By: Newberry

4
5
6 AS INTRODUCED

7 An Act relating to Oklahoma Capital Formation Act;
8 amending 74 O.S. 2011, Sections 5085.4, 5085.7, as
9 amended by Section 1, Chapter 361, O.S.L. 2012, 74
10 O.S. 2011, 5085.8, as amended by Section 2, Chapter
11 361, O.S.L. 2012, 5085.9 and Section 3, Chapter 361,
12 O.S.L. 2012 (74 O.S. Supp. 2016, Sections 5085.7,
13 5085,8 and 5085.15), which relate to capital
14 investment and tax credits; modifying powers and
15 duties of Oklahoma Capital Investment Board;
16 eliminating specified management and review
17 requirement by Oklahoma Futures; modifying total
18 amount of tax credit authorization for specified time
19 period; requiring specified amount of tax credits
20 returned to state; modifying time period during
21 which, and conditions under which, credits may be
22 exercised; deleting specified limitations on sale of
23 credits; modifying amount of credits which may be
24 transferred after specified date; deleting specified
limitations on Board powers and duties; deleting
specified limitation on Board power to solicit
proposals for investment capital, extend certain
guarantees, perform certain functions related to the
Board's mission; modifying dollar requirement for
return; deleting limitation on ability of Board,
subsidiaries or affiliates to enter into or modify
certain agreements, contracts or commitments which
would affect certain investments; modifying entities
to which annual report is provided; modifying
requirements related to analysis of Board
performance; modifying conditions under which monies
paid to the Board or its subsidiary or affiliate
would be paid to the General Revenue Fund; and
providing an effective date.

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

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

4 Section 5085.4. In order to fulfill its mission as mobilizer of
5 equity and near-equity capital, the Oklahoma Capital Investment
6 Board shall ~~be subject to the policy development of Oklahoma~~
7 ~~Futures. The Oklahoma Capital Investment Board shall develop an~~
8 annual business plan for the Board. ~~The business plan shall be~~
9 ~~submitted to Oklahoma Futures for its approval and shall be included~~
10 ~~in the annual report of Oklahoma Futures. Oklahoma Futures shall~~
11 ~~review the business plan and the annual report of the Board to~~
12 ~~ensure its consistency with the goals of the state's recurring five-~~
13 ~~year economic development plan.~~ The Board shall distribute copies
14 of the business plan by such means that will make it widely
15 available to the members of the Legislature, communities, firms and
16 local economic development managers throughout this state. ~~Oklahoma~~
17 ~~Futures shall not be involved in the day-to-day administration of~~
18 ~~the Board.~~

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

22 Section 5085.7. A. The State of Oklahoma hereby issues tax
23 credits that may be used to reduce the tax liability of a person,
24 firm or corporation if such liability is imposed pursuant to the

1 provisions of Section 2355 of Title 68 of the Oklahoma Statutes or
2 Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax
3 credits against liabilities imposed pursuant to Section 624 of Title
4 36 of the Oklahoma Statutes shall be limited to the amount that
5 would otherwise be collected and allocated to the General Revenue
6 Fund of the State Treasury. Tax credits issued and transferred to
7 the Oklahoma Development Finance Authority pursuant to the
8 provisions of this section and prior to July 1, 1991, are hereby
9 transferred to the Oklahoma Capital Investment Board, created
10 pursuant to the provisions of the Oklahoma Capital Formation Act.
11 ~~The~~ Prior to the effective date of this act, the total amount of tax
12 credits ~~that are hereby~~ issued, or ~~are~~ transferred pursuant to this
13 section to the Board, is One Hundred Million Dollars
14 (\$100,000,000.00). On the effective date of this act, Nine Million
15 Eighty-five Thousand Dollars (\$9,085,000.00) of such credits shall
16 be returned to the state and the total amount of tax credits issued
17 shall be limited to Sixty Million Dollars (\$60,000,000.00). The
18 credits shall be freely transferable to subsequent transferees;
19 however, no such tax credit shall be exercisable before July 1,
20 1990, nor, except as otherwise provided by subsection B of this
21 section, after ~~July 1, 2020~~ July 1, 2035.

22 B. Tax credits may be exercised after ~~July 1, 2020~~ July 1,
23 2035, if such tax credits were purchased or were agreed to be
24 purchased based upon a contractual commitment to the Board made by a

1 person or entity pursuant to an agreement originally entered into no
2 later than ~~December 31, 1995~~ July 1, 2035. Any such credits may be
3 exercised until fully utilized by the person or entity having
4 entered into such contractual commitment or by any person or entity
5 having obtained tax credits from a person or entity having made such
6 a contractual commitment or by any subsequent transferee ~~if such tax~~
7 ~~credit transfer occurred prior to the effective date of this act.~~

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

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

21 E. ~~The~~ After the effective date of this act, the Board shall
22 ensure that no more than ~~Twenty Million Dollars (\$20,000,000.00)~~
23 Twelve Million Dollars (\$12,000,000.00) in tax credits has been
24 transferred which may be claimed and used to reduce the tax

1 otherwise imposed by Section 2355 of Title 68 of the Oklahoma
2 Statutes or Section 624 of Title 36 of the Oklahoma Statutes for any
3 one (1) fiscal year.

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

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

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

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

22 J. ~~Except as otherwise provided by this section and by~~
23 ~~subsections F and G of Section 5085.8 of this title, the~~ The Board
24 shall have the power to make any contract, execute any document,

1 charge reasonable fees for services rendered, perform any act or
2 enter into any financial or other transaction necessary in order to
3 carry out its mission.

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

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

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

1 quality of management, investment philosophy and process, historical
2 investment performance, probability of success in fund raising, the
3 amount and timing of fees to be paid, and such other investment
4 criteria as may be commonly used in professional portfolio
5 management as the Board may deem appropriate.

6 B. ~~Except as otherwise provided by subsections F and G of this~~
7 ~~section, the~~ The Board shall have the power to extend a guarantee in
8 the form of a put option or such other method as selected by the
9 Board. Guarantees may extend to principal plus interest over the
10 term of the guarantee at a rate set by Board resolution from time to
11 time. Guarantees in whatever form negotiated by the Board may be
12 made for any period of time, but no term shall expire prior to
13 January 1, 1992. The Board may charge a reasonable fee for costs
14 and the fair compensation of risk associated with its guarantee.
15 The guarantees extended by the Board shall in no way be an
16 obligation of the state and may be restricted to specific funds or
17 assets of the Board; provided, however, proceeds from the sale of
18 any tax credits shall be sufficient to meet contractual guarantee
19 obligations of the Board. The Board shall have the right to
20 contract freely to protect the interests of the State of Oklahoma.
21 The Board shall ensure that at least ~~Two Dollars (\$2.00)~~ Three
22 Dollars (\$3.00) of equity or near equity capital will be invested in
23 Oklahoma businesses or projects for every One Dollar (\$1.00) of
24 ~~principal guaranteed~~ tax credits transferred by the Board.

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

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

18 E. In carrying out the mission of the Board as authorized in
19 the Oklahoma Capital Formation Act, neither the Board nor its
20 officers, directors or employees shall be considered to be broker-
21 dealers, agents, investment advisors or investment adviser
22 representatives under Title 71 of the Oklahoma Statutes. The tax
23 credits issued or transferred pursuant to the Oklahoma Capital
24 Formation Act and Section 2357.7 of Title 68 of the Oklahoma

1 Statutes shall not be considered to be securities under Title 71 of
2 the Oklahoma Statutes.

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

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

23 ~~2. Modify any agreement executed prior to the effective date of~~
24 ~~this act by the Board or executed by any subsidiary or affiliate of~~

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

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

21 1. ~~Enter into any contract for the purpose of guaranteeing, in~~
22 ~~whole or in part, the repayment of obligations owed by a business~~
23 ~~entity, other than a subsidiary of the Board, in connection with a~~
24

1 ~~loan of money from a bank, financial institution or any other~~
2 ~~entity; or~~

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

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

13 Section 5085.9. A. The Board shall publish a separate annual
14 report in conjunction with its annual audit and present the report
15 to the Governor, and the members of the Legislature ~~and Oklahoma~~
16 ~~Futures~~. The annual report shall review the mission of the Board
17 and programs implemented according to objective measures set forth
18 in the Board's business plan. The Board shall distribute this
19 annual report by such means that will make it available to the
20 financial community.

21 B. ~~Seven (7) years after the Board has begun operations,~~
22 ~~Oklahoma Futures shall~~ On or before December 31, 2021, and at least
23 once every three (3) years thereafter, the Board shall engage a
24 qualified, independent firm to perform an impact analysis intended

1 to review, analyze and evaluate the extent to which the Board has
2 achieved its statutory mission. The ~~evaluation~~ impact analysis
3 shall include, but not be limited to, an examination of quantified
4 results of the Board's programs and plans in terms of equity and
5 near equity capital invested, jobs created and payroll generated in
6 Oklahoma as a result of Board programs.

7 SECTION 5. AMENDATORY Section 3, Chapter 361, O.S.L.
8 2012 (74 O.S. Supp. 2016, Section 5085.15), is amended to read as
9 follows:

10 Section 5085.15. Within thirty (30) days after the Oklahoma
11 Capital Investment Board ~~or any subsidiary or affiliate of the Board~~
12 has ceased to exist and has made payment of any remaining expense or
13 obligation created by the Board or by ~~the~~ any subsidiary or
14 affiliate of the Board, pursuant to the terms of any promissory
15 note, loan agreement, guaranty agreement, investment agreement or
16 other contract or agreement, any remaining monies paid to either the
17 Board or any subsidiary or affiliate of the Board ~~pursuant to the~~
18 ~~terms of an agreement or contract entered into prior to the~~
19 ~~effective date of this act shall be paid by the Board or by its~~
20 ~~subsidiary or affiliate~~ to the General Revenue Fund of the State
21 Treasury.

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

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24 56-1-870 JCR 1/12/2017 5:32:43 PM