

1 ENGROSSED SENATE
2 BILL NO. 760

By: Kirt and Hall of the Senate

3 and

4 Boatman of the House

5
6 An Act relating to the Oklahoma Capital Investment
7 Board; amending 74 O.S. 2021, Sections 5085.5,
8 5085.6, 5085.8, 5085.10, 5085.11, 5085.12, 5085.14,
9 5085.15, and 5085.16, which relate to the Oklahoma
10 Capital Formation Act; modifying definition;
11 modifying reference; dissolving Board upon certain
12 date; transferring certain contracts and management
13 of certain investments to the Oklahoma Science and
14 Technology Research and Development Board; updating
15 statutory reference; updating statutory language; and
16 providing an effective date.

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

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

20 Section 5085.5. For purposes of ~~this act~~ the Oklahoma Capital
21 Formation Act:

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

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

3. "Equity capital" means capital invested in common or
preferred stock, royalty rights, limited partnership interests, and

1 any other securities or rights that evidence ownership in private
2 businesses;

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

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

7 6. "Persons" means individuals, corporations, partnerships, or
8 other lawfully organized entities;

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

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

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

22 b. Tax credits utilized pursuant to subparagraph a of
23 this paragraph shall be treated and may be claimed as
24 a payment of tax or estimated tax for the purposes of

1 and as defined in Sections 2375, 2385.9, and 2385.13
2 of Title 68 of the Oklahoma Statutes. Such tax
3 credits are further subject to the system developed in
4 conjunction with the Oklahoma Tax Commission as
5 required by subsection C of Section 5085.7 of this
6 title for registration and verification of the tax
7 credits. Taxpayers may rely upon the provisions of
8 the registration and verification system developed
9 pursuant to Section 5085.7 of this title.

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

12 Section 5085.6. A. ~~The~~ Until the effective date of this act,
13 the Oklahoma Capital Investment Board shall consist of five (5)
14 Directors who shall be appointed by the Governor with the advice and
15 consent of the Senate. Directors shall be selected based upon
16 outstanding knowledge and leadership and shall possess experience in
17 the management of investments similar in nature and in value to
18 those of the Board. Directors shall serve for a term of office of
19 five (5) years. Provided, the initial Board of Directors of the
20 Oklahoma Capital Investment Board shall consist of the trustees of
21 the trust certified as the Oklahoma Capital Investment Board
22 pursuant to the provisions of ~~Section 2 of this act~~ Section 5085.2
23 of this title and the Directors of the Oklahoma Capital Investment
24 Board who were appointed ~~pursuant to the provisions of Section~~

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

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

14 C. The meetings of the Directors shall be subject to the
15 Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the
16 Oklahoma Statutes, and the Oklahoma Open Records Act, Section 24A.1
17 et seq. of Title 51 of the Oklahoma Statutes. Any information
18 submitted to or compiled by the Oklahoma Capital Investment Board
19 with respect to the marketing plans, financial statements, trade
20 secrets, research concepts, methods or products, or any other
21 proprietary information of persons, firms, associations,
22 partnerships, agencies, corporations, or other entities shall be
23 confidential, except to the extent that the person or entity that
24 provided such information or that is the subject of such information

1 consents to disclosure. Executive sessions may be held to discuss
2 such materials if deemed necessary by the Directors.

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

23 E. Bonds issued by the Oklahoma Capital Investment Board shall
24 be subject to oversight pursuant to the Oklahoma Bond Oversight and

1 Reform Act, Section 695.1 et seq. of Title 62 of the Oklahoma
2 Statutes.

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

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

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

1 timing of fees to be paid, and such other investment criteria as may
2 be commonly used in professional portfolio management as the Board
3 may deem appropriate.

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

22 C. If the Board purchases any security pursuant to an agreement
23 with an investor group, the Board shall acquire such securities and
24 may invest, manage, transfer, or dispose of such securities in

1 accordance with policies for management of assets adopted by the
2 Board.

3 D. Except as otherwise provided by subsections F and G of this
4 section, the Board shall have the power to make any contract,
5 execute any document, perform any act, or enter into any financial
6 or other transaction necessary in order to carry out its mission.
7 The Board may employ such persons as may be required for the
8 performance of any function authorized or required by 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 the Oklahoma Capital Formation Act, neither the Board nor its
18 officers, directors, or employees shall be considered to be broker-
19 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~~ June 8, 2012,
2 except for the investment of funds required by provisions in a
3 contract executed by the Board or by any subsidiary or affiliate of
4 the Board prior to ~~the effective date of this act~~ June 8, 2012, or
5 executed by an entity that was not a subsidiary or affiliate of the
6 Board at the time such contract was executed but which became a
7 subsidiary or affiliate of the Board subsequent to the execution of
8 such contract, but prior to ~~the effective date of this act~~ June 8,
9 2012, neither the Board nor any entity which is a subsidiary or
10 affiliate of the Board nor any entity which is controlled either
11 directly or indirectly by the Board or which acts under the
12 authority of or pursuant to the direction of the Board 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~~ June 8, 2012, by the Board or executed by any subsidiary or
23 affiliate of the Board or executed by any entity that was not a
24 subsidiary or affiliate of the Board at the time such contract was

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

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

1 2. Modify any contract described by paragraph 1 of this
2 subsection executed prior to ~~the effective date of this act~~ June 8,
3 2012, by the Board or executed by any subsidiary or affiliate of the
4 Board or executed by any entity that was not a subsidiary or
5 affiliate of the Board at the time such contract was executed, but
6 which subsequently became a subsidiary or affiliate, in a manner
7 that would increase any existing obligation of the Board or its
8 subsidiary or affiliate or extend the term of any such contract.

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

11 Section 5085.10. Notwithstanding other provisions of law, the
12 Oklahoma Science and Technology Research and Development Board or
13 any entity designated by the Board, shall have the authority to
14 expend funds to administer and operate the programs of the ~~Oklahoma~~
15 ~~Capital Investment~~ Board.

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

18 Section 5085.11. A. There is hereby created in the State
19 Treasury a revolving fund for the Oklahoma Department of Commerce to
20 be designated the "Oklahoma Capital Formation Revolving Fund". The
21 fund shall be a continuing fund, not subject to fiscal year
22 limitations, and shall consist of appropriated funds. All monies
23 accruing to the credit of ~~said~~ the fund are hereby appropriated and,
24 as authorized by the Oklahoma ~~Capital Investment~~ Science and

1 Technology Research and Development Board, shall be expended by the
2 Oklahoma Department of Commerce to perform the duties imposed upon
3 the ~~Oklahoma Capital Investment~~ Board by law. Expenditures of
4 appropriated funds from ~~said~~ the fund shall be made upon warrants
5 issued by the State Treasurer against claims filed as prescribed by
6 law with the Director of the Office of Management and Enterprise
7 Services for approval and payment.

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

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

17 Section 5085.12. Nothing contained herein is or shall be
18 construed as a restriction or limitation upon any powers which the
19 Oklahoma ~~Capital Investment~~ Science and Technology Research and
20 Development Board might otherwise have under any other law of this
21 state heretofore or hereafter enacted and the provisions of ~~this act~~
22 the Oklahoma Capital Formation Act are cumulative to such powers.
23 The provisions hereof do and shall be construed to provide a
24 complete, additional, and alternative method for the doing of the

1 things authorized and shall be regarded as supplemental and
2 additional to powers conferred by any other laws.

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

5 Section 5085.14. A. The Oklahoma ~~Capital Investment~~ Science
6 and Technology Research and Development Board may adopt rules,
7 policies, procedures, and regulatory and administrative measures
8 necessary to administer the programs of the Board or convenient for
9 the organization and internal management of Board responsibilities.

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

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

18 Section 5085.15. Within thirty (30) days after the Oklahoma
19 ~~Capital Investment~~ Science and Technology Research and Development
20 Board or any subsidiary or affiliate of the Board has made payment
21 of any remaining expense or obligation created by the Board or by
22 the subsidiary or affiliate, pursuant to the terms of any promissory
23 note, loan agreement, guaranty agreement, investment agreement, or
24 other contract or agreement, any remaining monies paid to either the

1 Board or any subsidiary or affiliate of the Board pursuant to the
2 terms of an agreement or contract entered into prior to ~~the~~
3 ~~effective date of this act~~ June 8, 2012, shall be paid by the Board
4 or by its subsidiary or affiliate to the General Revenue Fund of the
5 State Treasury.

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

8 Section 5085.16. None of the provisions of ~~this act~~ the
9 Oklahoma Capital Formation Act shall alter, amend, modify, affect,
10 diminish, or impair the enforceability of, or any obligation or
11 liability of the Oklahoma ~~Capital Investment~~ Science and Technology
12 Research and Development Board or any entity which is a subsidiary
13 or affiliate of the ~~Oklahoma Capital Investment~~ Board or any entity
14 which is controlled either directly or indirectly by the ~~Oklahoma~~
15 ~~Capital Investment~~ Board under any contract, agreement, guarantee,
16 or instrument entered into or delivered by such party with any
17 business entity or bank, financial institution, or any other entity
18 existing as of ~~the effective date of this act~~ June 8, 2012,
19 including, without limitation, any guarantee extended by the
20 ~~Oklahoma Capital Investment~~ Board and any assignment of any third-
21 party commitments to purchase, and proceeds released from the sale
22 of, tax credits, all of which shall remain in full force and effect.

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

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