An Act

ENROLLED SENATE
BILL NO. 1159

By: Adelson and Mazzei of the Senate

and

Sears of the House

An Act relating to the Oklahoma Capital Formation Act; amending 74 O.S. 2011, Sections 5085.7 and 5085.8, which relate to tax credits and capital investment; modifying time period during which, and circumstances under which, specified credits may be exercised; modifying application of certain limits on sale of credits; providing exceptions to specified powers and duties of Oklahoma Capital Investment Board; limiting ability of Board or specified entities to enter into certain contracts or modify certain agreements related to investments or guarantees for repayment of obligations; requiring payment of specified funds to General Revenue Fund during specified time period; providing for effect of enactment of certain provisions; providing for codification; and declaring an emergency.

SUBJECT: Oklahoma Capital Formation Act

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 5085.7, is amended to read as follows:

Section 5085.7. A. The State of Oklahoma hereby issues tax credits that may be used to reduce the tax liability of a person,

firm or corporation if such liability is imposed pursuant to the provisions of Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury. Tax credits issued and transferred to the Oklahoma Development Finance Authority pursuant to the provisions of this section and prior to ~~the effective date of this act~~ July 1, 1991, are hereby transferred to the Oklahoma Capital Investment Board, created pursuant to the provisions of ~~this act~~ the Oklahoma Capital Formation Act. The total amount of tax credits that are hereby issued, or are transferred pursuant to this section to the Board, is One Hundred Million Dollars ($100,000,000.00). The credits shall be freely transferable to subsequent transferees; however, no such tax credit shall be exercisable before July 1, 1990, nor, except as otherwise provided by subsection B of this section, after July 1, ~~2015~~ 2020.

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

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

~~B.~~ D. The ~~Oklahoma Capital Investment~~ Board shall determine the amount of individual tax credits to be transferred pursuant to ~~this act~~ the Oklahoma Capital Formation Act and may negotiate for sale of

such credits subject only to the limits imposed by ~~this act~~ the Oklahoma Capital Formation Act, including the provisions of subsections F and G of Section 5085.8 of this title.

E. The Board shall ensure that no more than Twenty Million Dollars ($20,000,000.00) in tax credits has been transferred which may be claimed and used to reduce the tax otherwise imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes for any one (1) fiscal year.

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

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

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

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

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

K. The Board may employ such persons as may be required for the proper implementation of ~~this act~~ the Oklahoma Capital Formation Act, the management of its assets, or the performance of any

function authorized or required by ~~this act~~ the Oklahoma Capital Formation Act or necessary for the accomplishment of any such function. Such persons shall be selected by the Board based upon outstanding knowledge and leadership in the field for which the person performs services for the Board.

SECTION 2. AMENDATORY 74 O.S. 2011, Section 5085.8, is amended to read as follows:

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

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

invested in Oklahoma businesses or projects for every One Dollar ($1.00) of principal guaranteed by the Board.

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

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

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

F. On and after the effective date of this act, except for the investment of funds required by provisions in a contract executed by the Board or by any subsidiary or affiliate of the Board prior to the effective date of this act, or executed by an entity that was not a subsidiary or affiliate of the Board at the time such contract was executed but which became a subsidiary or affiliate of the Board subsequent to the execution of such contract, but prior to the effective date of this act, neither the Board nor any entity which is a subsidiary or affiliate of the Board nor any entity which is

controlled either directly or indirectly by the Board or which acts under the authority of or pursuant to the direction of the Board shall:

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

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

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

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.15 of Title 74, unless there is created a duplication in numbering, reads as follows:

Within thirty (30) days after the Oklahoma Capital Investment Board or any subsidiary or affiliate of the Board has made payment of any remaining expense or obligation created by the Board or by the subsidiary or affiliate, pursuant to the terms of any promissory note, loan agreement, guaranty agreement, investment agreement or other contract or agreement, any remaining monies paid to either the Board or any subsidiary or affiliate of the Board pursuant to the terms of an agreement or contract entered into prior to the effective date of this act shall be paid by the Board or by its subsidiary or affiliate to the General Revenue Fund of the State Treasury.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.16 of Title 74, unless there is created a duplication in numbering, reads as follows:

None of the provisions of this act shall alter, amend, modify, affect, diminish or impair the enforceability of, or any obligation or liability of the Oklahoma Capital Investment Board or any entity which is a subsidiary or affiliate of the Oklahoma Capital Investment Board or any entity which is controlled either directly or indirectly by the Oklahoma Capital Investment Board under any contract, agreement, guarantee or instrument entered into or delivered by such party with any business entity or bank, financial institution or any other entity existing as of the effective date of this act, including, without limitation, any guarantee extended by the Oklahoma Capital Investment Board and any assignment of any third-party commitments to purchase, and proceeds released from the

sale of, tax credits, all of which shall remain in full force and effect.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 23th day of May, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 24th

day of May, 2012,

at 1:12 o'clock P M.

By: Jenni R Pogar

Approved by the Governor of the State of Oklahoma the 8 day of June, 2012, at 3:06 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 8th day of June, 2012,

at 4:45 o'clock P. M.

By: Michelle R Day