

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1768

By: Howard

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5
6 AS INTRODUCED

7 An Act relating to rural business development;
8 creating the Oklahoma Agribusiness and Rural Jobs
9 Act; defining terms; allowing for capital investment
10 into a rural fund; providing for the amount of
11 credits able to be claimed by a rural investor;
12 prohibiting the refund or sale of credits; providing
13 for a rural fund to apply for an equity investment
14 from the Oklahoma Department of Commerce; providing
15 for contents of applications; authorizing the
16 Department to approve or deny application during
17 certain time frame; providing conditions denying an
18 application; authorizing certification of capital
19 investments if application is complete; requiring
20 rural fund to issue capital investment after certain
21 time period following certification; allowing the
22 Department to recapture funds under certain
23 circumstances; providing rural fund cure period for
24 recapture after notice is given by Department for
noncompliance; providing for rural fund to exit
program after certain closing date; authorizing
Department to accept exit applications; allowing for
Department to deny application; providing for
distribution from rural fund after certain time
period; allowing a rural fund to request from the
Department an opinion on potential businesses before
investments; providing for contents of report
compiled by the Department; requiring rural funds to
submit annual report to the Department; providing for
contents of report; providing for promulgation of
rules by the Department; providing for codification;
and providing an effective date.

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

3 SECTION 1. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5090 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

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

8 B. As used in this act:

9 1. "Affiliate" means an entity that directly, or indirectly
10 through one or more intermediaries, controls, or is controlled by,
11 or is under common control with another entity. For the purposes of
12 this act, an entity is controlled by another entity if the
13 controlling entity holds, directly or indirectly, the majority
14 voting or ownership interest in the controlled entity or has control
15 over the day-to-day operations of the controlled entity by contract
16 or by law;

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

20 3. "Capitol investment" means any entity investment in a rural
21 fund by a rural investor that:

22 a. is acquired after the effective date of this act as
23 its original issuance solely in exchange for cash,
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1 b. has one hundred percent (100%) of its cash purchase
2 price used by the rural fund to make qualified
3 investments in eligible businesses located in this
4 state by the second year of the initial credit
5 allowance date, and

6 c. is designated by the rural fund as a capital
7 investment under this act and is certified by the
8 Department pursuant to subsection E of this section.
9 This term shall include any capital investment that
10 does not meet the provisions of subparagraph a of
11 paragraph 1 of subsection E of this section if such
12 investment was a capital investment in the possession
13 of a prior holder;

14 4. "Credit allowance date" means the date on which a capital
15 investment is made and each of the five years of such date
16 thereafter;

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

18 6. "Eligible business" means a business that, at the time of
19 initial qualified investment in the company:

20 a. has less than two hundred fifty employees, and

21 b. (1) has its principal business operations in one or
22 more rural areas in this state, and

23 (2) produces or provides any goods or services
24 produced in this state normally used by farmers,

1 ranchers, or producers and harvesters of aquatic
2 products in their business operations, or to
3 improve the welfare or livelihood of such
4 persons, or is involved in the processing and
5 marketing of agricultural products, farm
6 supplies, and input suppliers, or is engaged in
7 agribusiness as defined by the United States
8 Department of Agriculture, or is engaged in
9 manufacturing, health care, technology,
10 transportation, or related services, or if not
11 engaged in such industries, the Department
12 determines that such investment will be
13 beneficial to the rural areas and the economic
14 growth of the state. Any business which is
15 classified as an eligible business at the time of
16 initial investment in the business by a rural
17 fund shall remain classified as an eligible
18 business and may receive follow-on investments
19 from any rural fund, and such follow-on
20 investments shall be qualified investments even
21 though such business may not meet the definition
22 of an eligible business at the time of such
23 follow-on investment;

24 7. "Eligible distribution" means:

- a. a distribution of cash to one or more equity owners of a rural investor to fully or partially offset a projected increase in the owner's federal or state tax liability, including any penalties and interest, related to the owner's ownership, management, or operation of the rural investor,
- b. a distribution of cash as payment of interest and principal on the debt of the rural investor or rural fund, or
- c. a distribution of cash related to the reasonable costs and expenses of forming, syndicating, managing, and operating the rural investor or the rural fund, or a return of equity to affiliates of a rural investor or rural fund. Such distributions may include reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the rural fund and an annual management fee that shall not exceed two percent (2%) of the rural fund's qualified investment authority;

8. "Principal business operations" means the location where at least sixty percent (60%) of a business's employees work or where employees who are paid at least sixty percent (60%) of such business's payroll work. A business that has agreed to relocate

1 employees using the proceeds of a qualified investment to establish
2 its principal business operations in a new location shall be deemed
3 to have its principal business operations in such new location if it
4 satisfies these requirements no later than one hundred eighty (180)
5 days after receiving a qualified investment;

6 9. "Purchase price" means the amount paid to the rural fund
7 that issues a capital investment which shall not exceed the amount
8 of capital investment authority certified pursuant to subsection E
9 of this section.

10 10. "Qualified investment" means any investment in an eligible
11 business or any loan to an eligible business with a stated maturity
12 date of at least one (1) year after the date of issuance, excluding
13 revolving lines of credit and senior secured debt unless the
14 eligible business has a credit refusal letter or similar
15 correspondence from a depository institution or a referral letter or
16 similar correspondence from a depository institution referring the
17 business to a rural fund; provided, that with respect to any one
18 eligible business, the maximum amount of investments made in such
19 business by one or more rural funds, on a collective basis with all
20 of the businesses' affiliates, with the proceeds of capital
21 investments shall be the greater of twenty percent (20%) of the
22 rural fund's capital investment authority or Six Million Five
23 Hundred Thousand Dollars (\$6,500,000.00), exclusive of investments
24

1 made with repaid or redeemed investments or interest or profits
2 realized thereon;

3 11. "Rural area" means any county of this state that has a
4 population of less than fifty thousand (50,000) according to the
5 latest decennial census of the United States;

6 12. "Rural fund" means an entity certified by the Department
7 under subsection E of this section;

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

10 14. "State tax liability" means any liability incurred by any
11 entity pursuant to Title 36 and Title 68 of the Oklahoma Statutes,
12 or, if such taxes are eliminated or reduced, the term shall also
13 mean any tax liability imposed on an entity or other person that had
14 tax liability under the laws of this state.

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

1 of the act may be carried forward for use in any subsequent taxable
2 year. It is the intent of this act that a rural investor claiming a
3 credit under this act is not required to pay an additional tax that
4 may arise as a result of claiming such credit.

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

16 E. 1. A rural fund that seeks to have an equity investment
17 certified as a capital investment and is eligible for credits under
18 this act shall apply to the Department. The Department shall begin
19 accepting applications within ninety (90) days of the effective date
20 of this act. The rural fund shall include the following:

- 21 a. the amount of capital investment requested,
- 22 b. a copy of the applicant's or an affiliate of the
- 23 applicant's license as a rural business investment
- 24 company under 7 U.S.C. Section 2009cc or as a small

1 business investment company under 15 U.S.C. Section
2 681 and a certificate executed by an executive officer
3 of the applicant attesting that such license remains
4 in effect and has not been revoked,

5 c. evidence that, as of the date the application is
6 submitted, the applicant or affiliates of the
7 applicant have invested at least One Hundred Million
8 (\$100,000,000.00) in nonpublic companies located in
9 rural areas within the United States,

10 d. an estimate of the number of jobs that will be created
11 or retained in this state as a result of the
12 applicant's qualified investments,

13 e. a business plan that includes a revenue impact
14 assessment projecting state and local tax revenue to
15 be generated by the applicant's proposed qualified
16 investments prepared by a nationally recognized,
17 third-party, independent economic forecasting firm
18 using a dynamic economic forecasting model that
19 analyzes the applicant's business plan over the ten
20 (10) years following the date the application is
21 submitted to the Department, and

22 f. a nonrefundable application fee of Five Thousand
23 Dollars (\$5,000.00) payable to the Department.
24

1 2. Within thirty (30) days after receipt of a completed
2 application, the Department shall grant or deny the application in
3 full or in part. The Department shall deny the application if:

4 a. the application does not satisfy all of the criteria
5 described in paragraph 1 of this subsection;

6 b. the revenue impact assessment submitted with the
7 application does not demonstrate that the applicant's
8 business plan will result in a positive economic
9 impact on this state over a ten-year period that
10 exceeds the cumulative amount of tax credits that
11 would be issued to the applicant if the application
12 were approved, and

13 c. the Department has already approved the maximum amount
14 of capital investment authority under paragraph 6 of
15 this subsection.

16 If the Department denies any part of the application, it shall
17 inform the applicant of the grounds for the denial. If the
18 applicant provides any additional information required by the
19 Department or otherwise completes its application with fifteen (15)
20 days of the notice of denial, the application shall be considered
21 completed as of the original date of the submission. If the
22 applicant fails to provide the information or fails to complete its
23 application within the fifteen-day period, the application remains
24 denied and shall be resubmitted in full with a new submission date.

1 3. If the application is complete, the Department shall certify
2 the proposed equity investment as a capital investment that is
3 eligible for credits under this act, subject to the limitations
4 contained in paragraph 6 of this subsection. The Department shall
5 provide written notice of the certification to the rural fund.

6 4. The Department shall certify capital investments in the
7 order that the applications were received by the Department.
8 Applications received on the same day shall be deemed to have been
9 received simultaneously.

10 5. For applications that are complete and received on the same
11 day, the Department shall certify applications in proportionate
12 percentages based upon the ratio of the amount of capital
13 investments requested in an application to the total amount of
14 capital investments requested in all applications.

15 6. The Department shall certify One Hundred Million Dollars
16 (\$100,000,000.00) in capital investments pursuant to this act.

17 7. Within sixty (60) days of the applicant receiving notice of
18 certification, the rural fund shall issue the capital investment to
19 and receive cash in the amount of the certified amount from a rural
20 investor. At least fifty percent (50%) of the rural investor's
21 capital investment shall be composed of capital raised by the rural
22 investor from sources, including directors, members, employees,
23 officers, and affiliates of the rural investor, other than the
24 amount of capital invested by the allocatee claiming the tax credits

1 in exchange for such allocation of tax credits. The rural fund
2 shall provide the Department with evidence of receipt of the cash
3 investment within sixty-five (65) days of the applicant receiving
4 notice of certification. If the rural fund does not receive the
5 cash investment and issue the capital investment within such time
6 period following receipt of the certification notice, the
7 certification shall lapse and the rural fund shall not issue the
8 capital investment without reapplying to the Department for
9 certification. Lapsed certifications revert to the capital
10 investment authority and shall be reissued pro rata to applicants
11 whose capital investments allocations were reduced pursuant to
12 paragraph 5 of this subsection and then in accordance with the
13 application process.

14 F. 1. The Department may recapture, from a rural investor that
15 claimed the credit on a tax return, the credit allowed under this
16 act if:

- 17 a. the rural fund does not invest one hundred percent
18 (100%) of its capital investment authority in
19 qualified investments in this state within two (2)
20 years of the closing date, with at least ten percent
21 (10%) of its capital investment authority initially
22 invested in eligible businesses engaged in
23 agribusiness as defined by the United States
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1 Department of Agriculture and at least ten percent
2 (10%) of such investment shall be equity investments,
3 b. the rural fund, after satisfying subparagraph a of
4 this paragraph, fails to maintain qualified
5 investments equal to one hundred percent (100%) of its
6 capital investment authority until the fifth year of
7 the credit allowance date. For the purposes of this
8 subsection, a qualified investment is considered
9 maintained even if the qualified investment was sold
10 or repaid so long as the rural fund reinvests an
11 amount equal to the capital returned or recovered by
12 the rural fund from the original investment, exclusive
13 of any profits realized, in other qualified
14 investments in this state within twelve (12) months of
15 the receipt of such capital. Amounts received
16 periodically by a rural fund shall be treated as
17 continually invested in qualified investments if the
18 amounts are reinvested in one or more qualified
19 investments by the end of the following calendar year.
20 A rural fund shall not be required to reinvest capital
21 returned from qualified investments after the fourth
22 year of the credit allowance date, and such qualified
23 investments shall be considered held continuously by
24

1 the rural fund through the fifth year of the credit
2 allowance date,

3 c. the rural fund, before exiting the program in
4 accordance with subsection I of this section, makes a
5 distribution or payment that results in the rural fund
6 having less than one hundred percent (100%) of its
7 capital investment authority invested in qualified
8 investments in this state or available for investment
9 in qualified investments or held in cash and other
10 marketable securities, or

11 d. the rural fund violates subsection H of this section.

12 2. Recaptured credits and the related capital investment
13 authority revert to the Department and shall be reissued pro rata to
14 applicants whose capital investment allocations were reduced
15 pursuant to paragraph 5 of subsection E of this section and then in
16 accordance with the application process.

17 G. Enforcement of each of the recapture provisions of paragraph
18 1 of subsection F of this section shall be subject to a six-month
19 cure period. No recapture shall occur until the rural fund has been
20 given notice of noncompliance and afforded six (6) months from the
21 date of such notice to cure the noncompliance.

22 H. No eligible business that receives a qualified investment
23 under this act, or any affiliates of such eligible business, may
24 directly or indirectly:

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

5 2. Loan to or invest in a rural fund or member or affiliate of
6 a rural fund including, but not limited to, a holder of a capital
7 investment issued by a rural fund, where the proceeds of such loan
8 or investment are directly or indirectly used to fund or refinance
9 the purchase of a capital investment under this act.

10 I. On or after the sixth year of the closing date, a rural fund
11 may apply to the Department to exit the program and no longer be
12 subject to regulation under this act. The Department shall respond
13 to the exit application within thirty (30) days of receipt. In
14 evaluating the exit application, the fact that no credits have been
15 recaptured and that the rural fund has not received a notice of
16 recapture that has not been cured pursuant to subsection G of this
17 section shall be sufficient evidence to prove that the rural fund is
18 eligible for exit. The Department shall not unreasonably deny an
19 exit application submitted under this subsection. If the exit
20 application is denied, the notice shall include the reasons for the
21 determination. The state shall received a ten percent (10%) share
22 of any distributions annually from a rural fund that made a capital
23 investment, other than the amount in excess of equity invested in
24 the rural fund and tax distributions made by the rural fund. A

1 rural fund shall distribute all amounts not held in qualified
2 investments no later than the fourteenth year of the closing date.
3 No claimant of credits pursuant to subsection C of this section
4 shall receive distributions in excess of an amount that would result
5 in an internal rate of return on capital invested that is more than
6 twenty percent (20%) if the number of jobs created is:

7 1. Less than sixty percent (60%) of the projected jobs in the
8 rural fund's approved business plan, then the state shall receive a
9 penalty of ten percent (10%) of the total tax credits distributed in
10 the rural fund, or

11 2. Greater than sixty percent (60%) but less than eighty
12 percent (80%) of the projected jobs in the rural fund's approved
13 business plan, then the state shall receive a penalty of five
14 percent (5%) of the total tax credits distributed to the rural fund.

15 J. A rural fund, before making a qualified investment, may
16 request from the Department a written opinion as to whether the
17 business in which it proposes to invest is an eligible business.
18 The Department, not later than the twentieth business day after the
19 date of receipt of such request, shall notify the rural fund of its
20 determination. If the Department fails to notify the rural fund of
21 its determination by the twentieth business day, the business in
22 which the rural fund proposes to invest shall be considered an
23 eligible business.
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1 K. 1. Rural funds shall submit a report to the Department
2 within the first fifteen (15) business days after the second year of
3 the initial credit allowance date that provides documentation as to
4 the investment of one hundred percent (100%) of the purchase price
5 of such capital investment in qualified investments. Such report
6 shall include:

- 7 a. the location of each eligible business receiving a
8 qualified investment,
- 9 b. bank statements of such rural fund evidencing each
10 qualified investment,
- 11 c. a copy of the written opinion of the Department set
12 forth in subsection J of this section or evidence that
13 such business was an eligible business at the time of
14 such qualified investment, as applicable,
- 15 d. the number of employment positions created and
16 retained as result of qualified investments,
- 17 e. the average annual salary of positions described in
18 subparagraph d of this paragraph, and
- 19 f. such other information required by the Department.

20 2. Thereafter, rural funds shall submit an annual report to the
21 Department within forty-five (45) days of the beginning of the
22 calendar year during the compliance period. The report shall
23 include, but it not limited to, the following:
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- 1 a. the number of employment positions created and
2 retained as a result of qualified investments,
3 b. the average annual salary of positions described in
4 subparagraph a of this paragraph.

5 L. The Oklahoma Department of Commerce shall promulgate the
6 rules necessary to implement the provisions of this act.

7 SECTION 2. This act shall become effective November 1, 2022.

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