

1 **SENATE FLOOR VERSION**

2 March 3, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1768

By: Howard and Jech of the
Senate

6 and

7 Wallace of the House

8
9 [revenue and taxation - Oklahoma Rural Jobs Act -
10 tax credit - sunset date - codification - effective
11 date]

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3930 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 This act shall be known and may be cited as the "Oklahoma Rural
18 Jobs Act".

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3931 of Title 68, unless there
21 is created a duplication in numbering, reads as follows:

22 As used in this act:

23 1. "Affiliate" means an entity that directly, or indirectly
24 through one or more intermediaries, controls, or is controlled by,

1 or is under the common control with another entity. An entity is
2 controlled by another entity if the controlling entity holds,
3 directly or indirectly, the majority of voting or ownership interest
4 in the controlled entity or has control over day-to-day operations
5 of the controlled entity by contract or by law;

6 2. "Applicable percentage" means zero percent (0%) for the
7 first two credit allowance dates, and fifteen percent (15%) for the
8 next four credit allowance dates;

9 3. "Capital investment" means any equity investment in a rural
10 fund by a rural investor which:

11 a. is acquired after the effective date of this act at
12 its original issuance solely in exchange for cash,

13 b. has one hundred percent (100%) of its cash purchase
14 price used by the rural fund to make qualified
15 investments in eligible businesses located in this
16 state by the third anniversary of the initial credit
17 allowance date, and

18 c. is designated by the rural fund as a capital
19 investment under this act and is certified by the
20 Department under the provisions of Section 3 of this
21 act. This shall include any capital investment that
22 does not meet the provisions of paragraph 1 of
23 subsection A of Section 3 of this act, if such
24

1 investment was a capital investment in the hands of a
2 prior holder;

3 4. "Credit allowance date" means the date on which the
4 Department certifies a rural fund's capital investment and each of
5 the five anniversary dates of such date thereafter;

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

7 6. "Eligible business" means a business that, at the time of
8 the initial qualified investment in the business:

9 a. has fewer than two hundred fifty employees, and

10 b. has its principal business operations in the state.

11 Any business which is classified as an eligible business at the
12 time of the initial investment in such business by a rural fund
13 shall remain classified as an eligible business and may receive
14 follow-on investments from any rural fund, and such follow-on
15 investments shall be qualified investments even though such business
16 may not meet the definition of an eligible business at the time of
17 such follow-on investment;

18 7. "Principal business operations" means the location where at
19 least sixty percent (60%) of a business's employees work or where
20 employees who are paid at least sixty percent (60%) of such
21 business's payroll work. A business that has agreed to relocate
22 employees using the proceeds of a qualified investment to establish
23 its principal business operations in a new location shall be deemed
24 to have its principal business operations in such new location if it

1 satisfied the requirements of this paragraph no later than one
2 hundred eighty (180) days after receiving a qualified investment;

3 8. "Purchase price" means the amount paid to the rural fund
4 that issues a capital investment which shall not exceed the amount
5 of capital investment authority certified under the provisions of
6 Section 3 of this act;

7 9. "Qualified investment" means any investment in an eligible
8 business or any loan to an eligible business with a stated maturity
9 date of at least one (1) year after the date of issuance, excluding
10 revolving lines of credit and senior-secured debt unless the chief
11 executive or similar officer of the eligible business certifies that
12 the eligible business sought and was denied similar financing from a
13 depository institution, by a rural fund; provided that, with respect
14 to any one eligible business, the maximum amount of investments made
15 in such business by one or more rural funds, on a collective basis
16 with all of the businesses' affiliates, with the proceeds of the
17 capital investments, shall be the greater of twenty percent (20%) of
18 the rural fund's capital investment authority or Six Million Five
19 Hundred Thousand Dollars (\$6,500,000.00), exclusive of investments
20 made with repaid or redeemed investments or interest or profits
21 realized thereon;

22 10. "Rural area" means any county of this state that has a
23 population of less than seventy-five thousand (75,000) or any city
24 or town of this state that has a population not to exceed seven

1 thousand (7,000) according to the 2020 Federal Decennial Census of
2 the United States;

3 11. "Rural fund" means an entity certified by the Department
4 under the provisions of Section 3 of this act;

5 12. "Rural investor" means an entity that makes a capital
6 investment in a rural fund;

7 13. "Senior-secured debt" means any loan that is secured by a
8 first mortgage on real estate with a loan-to-value ratio of less
9 than eighty percent (80%); and

10 14. "State tax liability" means any liability incurred by any
11 entity subject to the state income tax imposed under Title 68 of the
12 Oklahoma Statutes or an insurance company paying an annual tax on
13 its gross premium receipts including retaliatory tax, or other
14 financial institution paying taxes to the state or any political
15 subdivision of the state under provisions of Title 68 or Title 19 of
16 the Oklahoma Statutes or an express company which pays an annual tax
17 on its gross receipts in the state.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3932 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A rural fund that seeks to have an equity investment
22 certified as a capital investment eligible for credits authorized
23 under the provisions of this act shall apply to the Department. The
24 Department shall begin accepting applications within ninety (90)

1 days of the effective date of this act. The application shall
2 include:

3 1. The amount of capital investment requested;

4 2. A copy of the applicant's or an affiliate of the applicant's
5 licenses as a rural business investment company under 7 U.S.C.,
6 Section 2009cc or as a small business investment company under 15
7 U.S.C., Section 681, and a certificate executed by an executive
8 officer of the applicant attesting that such license remains in
9 effect and has not been revoked;

10 3. Evidence that, as of the date the application is submitted,
11 the applicant or affiliates of the applicant have invested at least
12 One Hundred Million Dollars (\$100,000,000.00) in nonpublic companies
13 located in counties within the United States with a population of
14 less than seventy-five thousand (75,000) according to the 2010
15 Federal Decennial Census of the United States;

16 4. A business plan that includes a revenue-impact assessment
17 projecting state and local tax revenue to be generated by the
18 applicant's proposed qualified investments, prepared by a nationally
19 recognized, third-party, independent economic forecasting firm using
20 a dynamic economic forecasting model that analyzes the applicant's
21 business plan over the ten (10) years following the date the
22 application is submitted to the Department. Such plan shall include
23 an estimate of the number of jobs created and jobs retained in this
24 state as a result of the applicant's qualified investments; and

1 5. A nonrefundable application fee of Five Thousand Dollars
2 (\$5,000.00) payable to the Department.

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

6 1. The applicant does not satisfy all the criteria provided
7 under subsection A of this section;

8 2. The revenue-impact assessment submitted with the application
9 does not demonstrate that the applicant's business plan will result
10 in a positive fiscal impact on the state over a ten-year period that
11 exceeds the cumulative amount of tax credits that would be issued to
12 the applicant if the application was approved; or

13 3. The Department has already approved the maximum amount of
14 capital investment authority under Section 4 of this act.

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

1 D. Upon approval of an application, the Department shall
2 certify the proposed equity investment as a capital investment
3 eligible for credits under this act, subject to limitations laid out
4 in Section 4 of this act. The Department shall provide written
5 notice of the certification to the applicant which shall include the
6 amount of the applicant's capital investment authority. The
7 Department shall certify capital investments in the order that the
8 application is received by the Department. Applications received on
9 the same day shall be deemed to have been received simultaneously.
10 For applications that are complete and received on the same day, the
11 Department shall certify applications in proportionate percentages
12 based upon the ratio of the amount of capital investment authority
13 requested in all applications.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3933 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The Department shall certify capital investment authority
18 under the provisions of this act in amounts that would not authorize
19 more than Fifteen Million Dollars (\$15,000,000.00) in state tax
20 credits to be claimed against state tax liability in any calendar
21 year, excluding any credit amounts carried forward as provided under
22 subsection A of Section 5 of this act. Within ninety (90) days of
23 the applicant receiving notice of certification, the rural fund
24 shall issue the capital investment to, and receive cash in the

1 amount of the certified amount from a rural investor. At least ten
2 percent (10%) of the rural investor's capital investment shall be
3 composed of capital raised by the rural investor directly or
4 indirectly from sources including directors, members, employees,
5 officers, and affiliates of the rural investor, other than the
6 amount invested by the allocatee claiming the tax credits in
7 exchange for such allocation of tax credits. The rural fund shall
8 provide the Department with evidence of the receipt of the cash
9 investment within ninety-five (95) days of the applicant receiving
10 notice of certification.

11 B. If the rural fund does not receive the cash investment and
12 issue the capital investment within such time period following
13 receipt of the certificate notice, the certification shall lapse and
14 the rural fund shall not issue the capital investment without
15 reapplying to the Department for certification. Lapsed
16 certifications shall revert to the Department and shall be reissued
17 pro rata to applicants whose capital investment allocations were
18 reduced in accordance with the application process provided under
19 subsection D of Section 3 of this act.

20 C. A rural fund, before making a qualified investment, may
21 request from the Department a written opinion as to whether the
22 business in which it proposes to invest is an eligible business.
23 The Department, no later than fifteen (15) business day after the
24 date of receipt of such request, shall notify the rural fund of its

1 determination. If the Department fails to notify the rural fund of
2 its determination by the twentieth business day, the business in
3 which the rural fund proposes to invest shall be deemed an eligible
4 business.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3934 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Upon making a capital investment in a rural fund, a rural
9 investor shall have a vested right to a credit against such entity's
10 state tax liability that may be utilized on each credit allowance
11 date of such capital investment in an amount equal to the applicable
12 percentage for such credit allowance date multiplied by the purchase
13 price paid to the rural fund for the capital investment. The amount
14 of the credit claimed by a rural investor shall not exceed the
15 amount of such entity's state tax liability for the tax year for
16 which the credit is claimed. Any amount of credit that a rural
17 investor is prohibited from claiming in a tax year as a result of
18 this section may be carried forward for use in any of the five (5)
19 subsequent tax years, but shall not be carried back to prior tax
20 years. It is the intent of this act that a rural investor claiming
21 a credit under this act is not required to pay any additional tax
22 that may arise as a result of claiming such credit.

23 B. No credit claimed under the provisions of this act shall be
24 refundable or saleable on the open market. Credits earned by or

1 allocated to a partnership, limited liability company, or S-
2 corporation may be allocated to the partners, members, or
3 shareholders of such entity for their direct use in accordance with
4 the provisions of any agreement among such partners, members, or
5 shareholders, and a rural fund shall notify the Department of the
6 names of the entities that are eligible to utilize transfer of a
7 capital investment upon such allocation, change, or transfer. Such
8 allocation shall not be considered a sale for the purpose of this
9 section.

10 C. The Department may recapture credits from a taxpayer that
11 claimed a credit authorized under this section if:

12 1. The rural fund does not invest sixty percent (60%) of its
13 capital investment authority in qualified investments in this state
14 within two (2) years of the credit allowance date, and one hundred
15 percent (100%) of its capital investment authority in qualified
16 investments in this state within three (3) years of the credit
17 allowance date; provided, that at least seventy percent (70%) of
18 these initial qualified investments must be made in eligible
19 businesses located in rural areas;

20 2. The rural fund fails to maintain qualified investments equal
21 to ninety percent (90%) of its capital investment authority from the
22 third anniversary until the sixth anniversary of the credit
23 allowance date, with seventy percent (70%) of such investments
24 maintained in eligible businesses located in rural areas. For each

1 year the rural fund fails to maintain such investments, the
2 Department may recapture an amount of such year's allowed credits
3 equal to the percentage difference between ninety percent (90%) of a
4 rural fund's capital investment authority and the actual amount of
5 qualified investments maintained for such year. For the purposes of
6 this subsection, a qualified investment is considered even if the
7 qualified investment was sold or repaid so long as the rural fund
8 reinvests an amount equal to the capital returned or recovered or
9 repaid by the rural fund from the original investment, exclusive of
10 any profits realized, in other qualified investments in this state
11 within twelve (12) months of receipt of such capital. Amounts
12 received periodically by a rural fund shall be treated as
13 continually invested in qualified investments if the amounts are
14 reinvested in one or more qualified investments by the end of the
15 following calendar year. A rural fund shall not be required to
16 reinvest capital returned from qualified investments after the fifth
17 anniversary of the credit allowance date, and such qualified
18 investments shall be considered held continuously by the rural fund
19 through the sixth anniversary of the credit allowance date;

20 3. Prior to the earlier of exiting the program in accordance
21 with this act or thirty (30) days after the sixth anniversary of the
22 credit allowance date, the rural fund makes a distribution or
23 payment that results in the rural fund having less than one hundred
24 percent (100%) of its capital investment authority invested in

1 qualified investments in the state or held in cash or other
2 marketable securities; or

3 4. The rural fund violates the provisions of Section 6 of this
4 act, in which case the Department may recapture an amount equal to
5 the amount of the rural fund's capital investment authority found to
6 be in violation of such provisions.

7 For the purposes of meeting and maintaining the objectives
8 established for investment in paragraphs 1 and 2 of this subsection,
9 a rural fund's qualified investments shall be multiplied by a factor
10 of one and one-quarter (1 1/4) in counties with less than thirty
11 thousand (30,000) in population and more than thirteen thousand
12 (13,000) in population and shall be multiplied by a factor of one
13 and one-half (1 1/2) in counties with a population of thirteen
14 thousand (13,000) or less.

15 D. Recaptured credits and related capital investment authority
16 shall revert to the Department and shall be reissued pro rata to
17 applicants whose capital investment allocations were reduced in
18 accordance with the application process provided under subsection D
19 of Section 3 of this act.

20 E. No recapture shall occur until the rural fund has been given
21 notice of noncompliance and afforded six (6) months from the date of
22 such notice to cure the noncompliance.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3935 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 No eligible business that receives a qualified investment under
5 the provisions of this act, or any affiliates or such eligible
6 business, shall directly or indirectly:

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

11 2. Loan to or invest in a rural fund or any member or affiliate
12 of a rural fund including, but not limited to, a holder of capital
13 investment issued by a rural fund, where the proceeds of such loan
14 or investment are directly or indirectly used to fund or refinance
15 the purchase of capital investments under this act.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3936 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Rural funds shall submit a report to the Department within
20 the first fifteen (15) business days after the second and third
21 anniversary of the initial credit allowance date. The report
22 following the second anniversary shall provide documentation as to
23 the investment of sixty percent (60%) of the purchase price of such
24 capital investment in qualified investments. The report following

1 the third anniversary shall provide documentation as to the
2 investment of one hundred percent (100%) of the purchase price of
3 such capital investment in qualified investments. Unless previously
4 reported pursuant to this subsection, such reports shall also
5 include:

6 1. The name and location of each eligible business receiving a
7 qualified investment;

8 2. Bank statements of such rural fund evidencing each qualified
9 investment;

10 3. A copy of the written opinion of the Department, as provided
11 in subsection C of Section 4 of this act, or evidence that such
12 business was an eligible business at the time of such qualified
13 investment, as applicable;

14 4. The number of jobs created and jobs retained as a result of
15 each qualified investment;

16 5. The average salary of positions described in paragraph 4 of
17 this paragraph; and

18 6. Such other information as required by the Department.

19 B. For all subsequent years, rural funds shall submit an annual
20 report to the Department within ninety (90) days of the beginning of
21 the calendar year during the compliance period. The report shall
22 include, but is not limited to the following:

23 1. The number of jobs created and jobs retained as a result of
24 qualified investments;

1 2. The average annual salary of positions described in
2 paragraph 1 of this subsection; and
3 3. Such other information as required by the Department.
4 C. On or after the sixth anniversary of the credit allowance
5 date, a rural fund may apply to the Department to exit the program
6 and no longer be subject to the regulation hereunder. The
7 Department shall respond to the exit application within fifteen (15)
8 days of receipt. In evaluating the exit application, the fact that
9 no credits have been recaptured and that the rural fund has not
10 received a notice of recapture that has not been cured pursuant to
11 subsection E of Section 5 of this act shall be sufficient evidence
12 to prove that the rural fund is eligible for exit. The Department
13 shall not unreasonably deny an exit application submitted under this
14 section. If an exit application is denied, the notice shall include
15 the reasons for the determination.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3937 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 The Department shall accept no new applications for tax credits
20 authorized under this act after December 1, 2032.

21 SECTION 9. This act shall become effective November 1, 2022.

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 March 3, 2022 - DO PASS AS AMENDED
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