

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1726

BY: BASTIN

AS INTRODUCED

AN ACT RELATING TO AGRICULTURE AND PUBLIC FINANCE;  
AMENDING SECTION 2, CHAPTER 182, O.S.L. 1987, AS  
LAST AMENDED BY SECTION 1, CHAPTER 248, O.S.L.  
1989, SECTIONS 4 AND 5, CHAPTER 182, O.S.L. 1987,  
SECTION 6, CHAPTER 182, O.S.L. 1987, AS AMENDED BY  
SECTION 2, CHAPTER 249, O.S.L. 1989, AND SECTION 7,  
CHAPTER 182, O.S.L. 1987 (2 O.S. SUPP. 1990,  
SECTIONS 1762, 1764, 1765, 1766 AND 1767), WHICH  
RELATE TO OKLAHOMA AGRICULTURAL LINKED DEPOSIT  
PROGRAM; MODIFYING DEFINITION; PROVIDING FOR  
DEPARTMENT OF COMMERCE TO DISSEMINATE CERTAIN  
INFORMATION; PROVIDING FOR DEPARTMENT OF COMMERCE  
TO ADMINISTER CERTAIN PROGRAM; PROVIDING DEPARTMENT  
OF COMMERCE WITH ADMINISTRATION OVER AGRICULTURAL  
LINKED DEPOSIT LOAN PACKAGES; PROVIDING PROCEDURES  
FOR ACCEPTANCE; AMENDING SECTION 4, CHAPTER 183,  
O.S.L. 1988, SECTIONS 5 AND 6, AS AMENDED BY  
SECTIONS 8 AND 9, CHAPTER 321, O.S.L. 1990, AND  
SECTION 7, CHAPTER 183, O.S.L. 1988 (62 O.S. SUPP.  
1990, SECTIONS 88.4, 88.5, 88.6 AND 88.7), WHICH  
RELATE TO THE OKLAHOMA SMALL BUSINESS LINKED  
DEPOSIT PROGRAM; PROVIDING DEPARTMENT OF COMMERCE  
WITH ADMINISTRATIVE AUTHORITY OVER OKLAHOMA SMALL  
BUSINESS LINKED DEPOSIT PROGRAM; PROVIDING FOR

DISSEMINATION OF INFORMATION, CERTAIN ASSISTANCE AND PROCEDURES BY DEPARTMENT OF COMMERCE; PROVIDING PROCEDURES FOR FUNDING OF APPROVED LOANS; REQUIRING CERTAIN REPORT BY DEPARTMENT OF COMMERCE; EXEMPTING DEPARTMENT OF COMMERCE FROM CERTAIN LIABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 182, O.S.L. 1987, as last amended by Section 1, Chapter 248, O.S.L. 1989 (2 O.S. Supp. 1990, Section 1762), is amended to read as follows:

Section 1762. As used in the Oklahoma Agricultural Linked Deposit Program:

1. "Eligible agricultural business" means any person engaged in producing, processing or marketing alternative agricultural products or an at-risk farm or ranch business, within the State of Oklahoma in operation which has developed a management plan through the Intensive Financial Management and Planning Support (IFMAPS) program of the Cooperative Extension Service of Oklahoma State University or the Farm Business Management Program of the State Department of Vocational and Technical Education;

2. "Eligible lending institution" means a financial institution that agrees to participate in the Oklahoma Agricultural Linked Deposit Program, and:

- a. eligible to be a depository of state funds, or
- b. is an institution of the farm credit system organized under the federal "Farm Credit Act of 1971", 12 U.S.C. 2001, as amended;

3. "Agricultural linked deposit" means a certificate of deposit placed by the State Treasurer with an eligible lending institution or an investment in bonds, notes, debentures, or other obligations or securities issued by the federal farm credit bank with regard to an eligible lending institution for the purpose of carrying out the intent of this act;

4. "Alternative agricultural products" means those products included in a report submitted by the Cooperative Extension Service of Oklahoma State University to the State Department of Agriculture, and any other products which the State Board of Agriculture determines will broaden Oklahoma's agricultural economic base;

5. "An at-risk farm or ranch business" shall be one which seeks a production loan and meets the following criteria:

a. at least sixty percent (60%) of gross income derived from farming and/or ranching, and

b. a debt-to-asset ratio over forty percent (40%);

6. "Agricultural Linked Deposit Loan Package" means the forms provided by the ~~State Treasurer~~ Department of Commerce for the purpose of applying for an agricultural linked deposit;

7. "Board" means the State Board of Agriculture; and

8. "Department" means the State Board of Agriculture or the State Department of Agriculture.

SECTION 2. AMENDATORY Section 4, Chapter 182, O.S.L. 1987 (2 O.S. Supp. 1990, Section 1764), is amended to read as follows:

Section 1764. The ~~State Treasurer~~ Department of Commerce shall disseminate information about the Oklahoma Agricultural Linked Deposit Program to the agriculture industry in this state.

SECTION 3. AMENDATORY Section 5, Chapter 182, O.S.L. 1987 (2 O.S. Supp. 1990, Section 1765), is amended to read as follows:

Section 1765. A. The ~~State Treasurer~~ Department of Commerce is hereby authorized to administer the Oklahoma Agricultural Linked Deposit Program. The ~~State Treasurer~~ Department of Commerce is further authorized to issue guidelines in a manner similar to the Administrative Procedures Act, Section 301 et seq. of Title 75 of the Oklahoma Statutes.

B. The ~~State Treasurer~~ Department of Commerce shall submit an annual report outlining the status of the Oklahoma Agricultural Linked Deposit Program to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 4. AMENDATORY Section 6, Chapter 182, O.S.L. 1987, as amended by Section 2, Chapter 248, O.S.L. 1989 (2 O.S. Supp. 1990, Section 1766), is amended to read as follows:

Section 1766. A. The Department of Commerce through the State Treasurer is hereby authorized to disseminate information and to provide agricultural linked deposit loan packages to the lending institutions eligible for participation in this act.

B. The agricultural linked deposit loan package shall be completed by the borrower before being forwarded to the lending institution for consideration. Any technical assistance in completing the agricultural loan package shall be provided by the Department of Agriculture.

C. 1. An eligible lending institution that desires to receive an agricultural linked deposit shall accept and review applications for loans from eligible agricultural businesses. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible agricultural business. No single linked deposit for an alternative agricultural product shall exceed One Million Dollars (\$1,000,000.00). No single linked deposit for an at-risk farm or ranch operation shall exceed Three Hundred Fifty Thousand Dollars (\$350,000.00). The total amount of agricultural

and small business linked deposit loans shall not exceed fifteen percent (15%) of all investable state funds under the control of the State Treasurer.

2. Only one linked deposit loan shall be made and be outstanding at any one time to any farmer. However, the linked deposit loan may be refinanced.

3. No loan shall be made to any officer or director of the lending institution making the loan.

D. An eligible agricultural business shall certify on its loan application that the reduced rate loan will be used exclusively for the purposes outlined in paragraph 1 of Section 1762 of this title.

E. In considering which eligible agricultural businesses to include in the agricultural linked deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located and other factors it considers appropriate to determine the relative financial need of the business.

F. The eligible lending institution shall forward to the State Treasurer, an agricultural linked deposit loan package, in the form and manner prescribed and approved by the ~~State Treasurer~~ Department of Commerce. The package shall include information regarding the amount of the loan requested by each eligible agricultural business and such other information regarding each business the State Treasurer and the State Board of Agriculture requires. The institution shall certify that each applicant is an eligible agricultural business, and shall, for each business, certify the present borrowing rate applicable to each specific eligible agricultural business.

G. Upon receipt of a completed agricultural linked deposit loan package, the ~~State Treasurer~~ Department of Commerce shall forward the agricultural linked deposit loan package to the Board. The Board shall review the agricultural linked deposit loan package to

determine if said package qualifies under this act. The Board shall make a recommendation concerning the package within ten (10) business days. The Board shall return the package to the ~~State Treasurer~~ Department of Commerce with a written recommendation of approval or rejection. If the Board recommends rejection, the written recommendation shall include reasons for said rejection. The Board shall forward a copy of its rejection notice to the lending institution and the borrower. The ~~State Treasurer~~ Department of Commerce shall keep a chronological list of applications forwarded by the Board for approval or rejection.

SECTION 5. AMENDATORY Section 7, Chapter 182, O.S.L. 1987 (2 O.S. Supp. 1990, Section 1767), is amended to read as follows:

Section 1767. A. The ~~State Treasurer~~ Department of Commerce may accept or reject an agricultural linked deposit loan package or any portion thereof, based on the ~~State Treasurer's~~ Department of Commerce's evaluation of the eligible agricultural businesses included in the package, the amount of individual loans in the package, and the amount of the package. If the ~~State Treasurer~~ Department of Commerce recommends rejection, the written recommendation shall include reasons for said rejection in a report to the Board. The Board shall forward a copy of the rejection notice to the lending institution and the borrower. The borrower may be allowed to bring his application into compliance with the Board and the ~~State Treasurer~~ Department of Commerce and resubmit the application. If the ~~State Treasurer~~ Department of Commerce rejects the loan because sufficient funds are not available for a linked deposit, then the applications may be considered in the order received when funds are once again available subject to a review by the Board and the lending institution. In evaluating the eligible agricultural businesses, the ~~State Treasurer~~ Department of Commerce

shall consider the recommendation of the Board and the economic needs of the area where the business is located.

B. Upon acceptance of the agricultural linked deposit loan package or any portion thereof, the ~~State Treasurer~~ Department of Commerce shall notify the Board, the State Treasurer, the lending institution and the borrower. Upon acceptance, the State Treasurer may place certificates of deposit with the eligible lending institution at a rate below current market rates, as determined and calculated by the State Treasurer, or may invest in bonds, notes, debentures, or other obligations or securities issued by the federal farm credit bank with respect to the eligible lending institution at a rate below current market rates, as determined and calculated by the State Treasurer. When necessary, the State Treasurer may place certificates of deposit or may invest in such obligations or securities prior to acceptance of an agricultural linked deposit loan package.

C. The eligible lending institution shall enter into an agricultural linked deposit agreement with the State Treasurer, which shall include requirements necessary to implement the purposes of the Oklahoma Agricultural Linked Deposit Program. Such requirements shall include an agreement by the eligible lending institution to lend an amount equal to the agricultural linked deposit to eligible agricultural businesses at an interest rate that reflects a percentage rate reduction below the present borrowing rate applicable to each specific agricultural business in the accepted loan package that is equal to the percentage rate reduction below market rates at which the certificates of deposit that constitute the agricultural linked deposit were placed or at which the investments in bonds, notes, debentures, or other obligations or securities that constitute the agricultural linked deposit were made. Such requirements shall also reflect the market conditions prevailing in the eligible lending institution's lending area. The

agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to be placed or the investment in bonds, notes, debentures, obligations, or securities to be made for any maturity considered appropriate by the State Treasurer not to exceed two (2) years and may be renewed for up to an additional two (2) years at the option of the State Treasurer. Interest shall be paid at the times determined by the State Treasurer.

SECTION 6. AMENDATORY Section 4, Chapter 183, O.S.L. 1988 (62 O.S. Supp. 1990, Section 88.4), is amended to read as follows:

Section 88.4 A. ~~The State Treasurer~~ Department of Commerce is hereby authorized to administer the Oklahoma Small Business Linked Deposit Program. ~~The State Treasurer~~ Department of Commerce is further authorized to issue guidelines in a manner similar to the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

B. ~~The State Treasurer~~ Department of Commerce shall take any and all steps necessary to implement the Oklahoma Small Business Linked Deposit Program and monitor compliance of eligible lending institutions and eligible participants, including the development of guidelines as necessary.

C. ~~The State Treasurer~~ Department of Commerce shall submit an annual report outlining the status of the Oklahoma Small Business Linked Deposit Program to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 7. AMENDATORY Section 5, Chapter 183, O.S.L. 1988, as amended by Section 8, Chapter 321, O.S.L. 1990 (62 O.S. Supp. 1990, Section 88.5), is amended to read as follows:



Section 88.5 A. The ~~State Treasurer~~ Department of Commerce is hereby authorized to disseminate information and to provide small business linked deposit loan packages to the lending institutions eligible for participation under this act.

B. The small business linked deposit loan package shall be completed by the borrower before being forwarded to the lending institution for consideration. Any technical assistance in completing such loan package shall be provided by the ~~State Treasurer~~ Department of Commerce.

C. An eligible lending institution that desires to receive a small business linked deposit shall accept and review applications for loans from eligible participants. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible participant. Loans under this act shall conform to the following conditions:

1. Maximum loan amounts under the Oklahoma Small Business Linked Deposit Act shall:

- a. not exceed One Million Dollars (\$1,000,000.00) for an eligible small business,
- b. not exceed Six Million Dollars (\$6,000,000.00) for an eligible industrial park or any public trust authorized in accordance with Section 176 of Title 60 of the Oklahoma Statutes engaged in industrial development as determined by the Department of Commerce. Such public trusts are limited to fifteen percent (15%) of the total available funds and a nonrenewable term not to exceed six (6) months unless their purpose is to make package passthrough loans to other private recipients for industrial development purposes. Loans made by an eligible trust cannot exceed the interest rate established by this act;

2. An eligible participant shall certify on the loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in accordance with the purpose of this section;

3. Only one linked deposit loan shall be made and be outstanding at any time to any eligible participant; provided that the linked deposit loan may be refinanced;

4. No linked deposit loan shall be approved for any otherwise eligible participant when fifty percent (50%) or more of the interest in or control of such otherwise eligible participant is owned directly or indirectly by a person who owns directly or indirectly fifty percent (50%) or more of or controls another participating eligible participant;

5. No loan shall be made to any officer or director of the lending institution making the loan or to any entity in which any such officer or director maintains a controlling interest;

6. No loan shall be made to any employee of the State Treasurer's office or members of the Board or to any entity in which any such officer or director maintains a controlling interest;

7. No loan will be made for the sole purpose of refinancing the existing debt of the applicant;

8. The amount of the linked deposit loan must not exceed Thirty Thousand Dollars (\$30,000.00) per job created and saved;

9. Whoever knowingly makes a false statement concerning a linked deposit loan application shall be prohibited from entering into the linked deposit loan program; and

10. Linked deposits may be made for any maturity considered appropriate by the ~~State Treasurer~~ Department of Commerce not to exceed two (2) years and may be renewed for up to an additional two (2) years at the discretion of the ~~State Treasurer~~ Department of Commerce. However, such loans made to eligible participants where the loan is to be used within an enterprise zone may be made for the

maturity date of three (3) years and have another three (3) years of renewal. Loans made to be used within Priority Enterprise Zones may be made with a maturity date of five (5) years and have another three (3) years of renewal. Interest shall be paid at the times determined by the State Treasurer. The State Treasurer may place a small business linked deposit with an eligible lending institution or decline to do so based on the cash flow needs of the state, the security of state funds, investment needs of the state and the ratio of state funds deposited to jobs which would be sustained or created.

D. In considering which eligible participants to include in the small business linked deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located and other factors it considers appropriate to determine the relative financial need of the business. Location in an enterprise zone shall be evidence of the economic needs of the area.

E. The eligible lending institution shall forward to the ~~State Treasurer~~ Department of Commerce a small business linked deposit loan package in the form and manner prescribed and approved by the ~~State Treasurer~~ Department of Commerce. The package shall include information regarding the amount of the loan requested by each eligible participant, the number of jobs to be created or sustained and such other information regarding each business the ~~State Treasurer~~ Department of Commerce and the Board requires. The institution shall certify that each applicant is an eligible participant, and shall, for each business, certify the present borrowing rate applicable to each specific eligible small business.

F. Upon receipt of a completed small business linked deposit loan package, the ~~State Treasurer~~ Department of Commerce shall forward the loan package to the Board, Oklahoma Tax Commission and Oklahoma Employment Security Commission. The Board shall review the

small business linked deposit loan package to determine if said package is qualified under this act. Within ten (10) days of receipt of the loan package, the Oklahoma Tax Commission and the Oklahoma Employment Security Commission shall determine and certify with the Board whether or not the applicant is in good standing. The Board shall make a recommendation concerning the package within ten (10) business days, after receipt of the responses from the Oklahoma Tax Commission and the Oklahoma Employment Security Commission. No applicant will be approved without certification of good standing with the Oklahoma Tax Commission and Oklahoma Employment Security Commission. The Board shall return the package to the ~~State Treasurer~~ Department of Commerce with a written recommendation of approval or rejection. If the Board recommends rejection, the written recommendation shall include reasons for said rejection. The Board shall forward a copy of its rejection notice to the lending institution and the borrower. The ~~State Treasurer~~ Department of Commerce shall keep a chronological list of applications forwarded by the Board for approval or rejection.

SECTION 8. AMENDATORY Section 6, Chapter 183, O.S.L. 1988, as amended by Section 9, Chapter 321, O.S.L. 1990 (62 O.S. Supp. 1990, Section 88.6), is amended to read as follows:

Section 88.6 A. Applications approved by the Board shall be subject to available funds, and if a loan or loan package is not funded for such reason, it will be funded in the chronological order of its approval.

B. The ~~State Treasurer~~ Department of Commerce shall reject any small business linked deposit loan package if the participant requesting such loan is not in good standing with the Oklahoma Tax Commission and the Oklahoma Employment Security Commission. Notwithstanding any provision of law to the contrary, said agencies shall provide the ~~State Treasurer~~ Department of Commerce with such

information as to the standing of each participant loan applicant within ten (10) days of the request for the information.

C. Upon acceptance of the small business linked deposit loan package or any portion thereof, the ~~State Treasurer~~ Department of Commerce shall notify the Board, the State Treasurer, the lending institution and the borrower. Upon acceptance the ~~State Treasurer~~ Department of Commerce may place certificates of deposit with the eligible lending institution at up to three percent (3%) below the comparable Treasury Bill rate, as determined and calculated by the State Treasurer. When necessary, the State Treasurer may place certificates of deposit prior to acceptance of a small business linked deposit loan package.

D. Upon the placement of a small business linked deposit with an eligible lending institution, the institution shall fund the loan to each approved eligible participant listed in the small business linked deposit loan package in accordance with the small business linked deposit agreement between the institution and the State Treasurer. The percentage rate of the loan shall be reduced by at least the same number of percentage points that the certificate of deposit was reduced upon placement. A certification of compliance with this subsection in the form and manner as prescribed by the State Treasurer shall be required of the eligible lending institution.

E. The ~~State Treasurer~~ Department of Commerce shall prepare, at least annually by January 1, and file with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, a report accurately reflecting whether loans pursuant to the Oklahoma Small Business Linked Deposit Program have resulted in jobs created or saved and the amount of loan per each job so referenced. The State Treasurer shall base such report upon information from the Employment Security Commission as to each applicant for which a linked deposit loan has been approved. Such report shall list

separately each loan, with name, address, and type of business by Standard Industrial Code, amount, estimated jobs saved or created, lending institution and locations by county and/or enterprise zone, if applicable.

SECTION 9. AMENDATORY Section 7, Chapter 183, O.S.L. 1988 (62 O.S. Supp. 1990, Section 88.7), is amended to read as follows:

Section 88.7 The State of Oklahoma, the Department of Commerce and the State Treasurer shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible participant. Any delay in payments in default on the part of an eligible participant does not in any manner affect the small business linked deposit agreement between the eligible lending institution and the State Treasurer.

SECTION 10. This act shall become effective September 1, 1991.

43-1-5753 MMS