

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 2627

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Smith (Dale), Stites,
Hilliard and Hager of the
House

and

Capps, Stipe, Kerr and
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2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economic development; amending 3 O.S. 1991, Sections 253 and 254, which relate to aircraft registration; amending 68 O.S. 1991, Section 6003, as last amended by Section 49, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1993, Section 6003), which relates to exemptions from aircraft excise tax; providing short title; authorizing certain establishments to claim certain payments based upon criteria related to location at former military facilities; defining term; prescribing procedures related to payment of incentives; prohibiting incentive payments to certain establishments; creating Former Military Facility Projects Fund; providing for deposit of certain monies in fund; prescribing conditions related to Fund; imposing limit on expenditures; imposing limitation upon eligibility for certain credits and exemptions; imposing limitation upon availability of benefits based on receipt of funds from certain entities; requiring rules; prescribing penalties; modifying provision for exemption of certain aircraft from registration fees; providing for treatment of certain payments as in lieu of ad valorem taxes; modifying exemptions from aircraft excise tax; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3801 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 8 of this act shall be known and may be cited as the "Former Military Facility Development Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3802 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, an establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act, Sections 3601 through 3609 of Title 68 of the Oklahoma Statutes, except that the establishment:

1. Has an annual gross payroll for new direct jobs, as defined in the Oklahoma Quality Jobs Program Act, projected by the Department of Commerce to equal at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) but less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the anticipated date of receipt of first incentive payment; and

2. Locates its principal business activity at a former military facility,

may qualify for payments from the Former Military Facility Projects Fund created in Section 3 of this act pursuant to approval by the Oklahoma Department of Commerce. Such establishments shall be deemed "former military facility projects".

B. Unless otherwise indicated in the Former Military Facility Development Act, the definitions contained in Section 3603 of Title 68 of the Oklahoma Statutes shall apply to the Former Military Facility Development Act.

C. As used in this section, "former military facility" shall mean any tract or parcel of real property used primarily for a military purpose during a state of war, armed conflict or during peace time, title to which was vested in the United States Government, any branch of the Armed Forces of the United States of America or was subsequently conveyed by such entities to the State of Oklahoma, any political subdivision of the State of Oklahoma, or any public trust having the State of Oklahoma or any political subdivision of the State of Oklahoma as its beneficiary, whether

singly or in combination with other government entities prior to the date on which the establishment acquired its interest.

D. The Department shall determine if the applicant is qualified to receive incentive payments.

E. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall former military facility project payments, cumulatively, exceed the estimated net direct state benefits. Notwithstanding any other provision of law, when the maximum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of projected former military facility projects payments provided by Sections 1 through 8 of this act have been obligated to specific establishments for a given fiscal year, then no additional application for such payments may be considered by the Department of Commerce for that fiscal year and in any event no payments in excess of said Two Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be paid by the Tax Commission within any fiscal year.

F. An establishment which meets the qualifications specified in Sections 1 through 8 of this act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Former Military Facility Development Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission except as provided and limited by this section and in Sections 3 and 4 of this act.

G. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a

copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of the Former Military Facility Development Act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 4 of this act. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3 and 4 of this act and within the applicable limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

H. No incentive payments which would otherwise be authorized by this section shall be made to an establishment occupying any lands title to which has been held or title to which is held, at the time of application for such payments, by any public trust created pursuant to the provisions of Section 176 et seq. of Title 60 of the Oklahoma Statutes if such trust is specifically excluded from the definition of "state agency" or "agency of the state" by the provisions of Section 33 of Title 25 of the Oklahoma Statutes or any other provision of law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3803 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Former Military Facility Projects Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the Fund. The amount deposited shall equal the sum of an amount determined by multiplying the net benefit rate provided by the Department of Commerce by the gross

payroll of each qualified military facility project establishment. All of the amounts deposited in such Fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Former Military Facility Development Act. Liability of the State of Oklahoma to make the payments under the Former Military Facility Development Act shall be limited to the balance contained in the Fund created by this section. Provided, the Tax Commission may never pay more than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) from the Fund in any one fiscal year.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3804 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive a payment from the Former Military Facility Project Fund, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim.

B. If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the date of the first incentive payment, or does not equal or exceed a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00) at any other time during the ten-year period after the date the first payment was made, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in this subsection. Provided, in no event shall former military facility projects payments,

cumulatively for any individual establishment, exceed the estimated net direct state benefits determined by the Department to apply to the military facility project establishment. Provided further, in no event shall the former military projects facility payments exceed, cumulatively for all qualifying establishments, payments in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in any single fiscal year.

C. An establishment that has qualified pursuant to Section 2 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved. If an establishment that is receiving former military facility projects payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of Title 68 of the Oklahoma Statutes.

D. As soon as practicable after such verification, the Tax Commission shall issue a warrant to the former military facility project establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3805 of Title 68, unless there is created a duplication in numbering, reads as follows:

The prohibition set forth in Section 3607 of Title 68 of the Oklahoma Statutes shall apply to an establishment which receives incentive payments pursuant to the Former Military Facility Development Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3806 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Department of Commerce and the Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of the Former Military Facility Development Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3807 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of the Former Military Facility Development Act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3808 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Department of Commerce shall prepare a report which shall include, but not be limited to, documentation of the new direct jobs created under the Former Military Facility Development Act and a fiscal analysis of the costs and benefits of the act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor of this state no later than March 1, 1996.

B. On and after January 1, 1997, no new or renewal applications to receive payments under the Former Military Facility Development Act shall be approved by the Oklahoma Department of Commerce. Provided, an establishment which, prior to January 1, 1997, has been approved by the Department to receive payments under the act shall continue to receive payments pursuant to the terms of its agreement with the State of Oklahoma as long as the establishment retains its eligibility.

SECTION 9. AMENDATORY 3 O.S. 1991, Section 253, is amended to read as follows:

Section 253. The following aircraft are exempt from provisions of ~~this act~~ Section 251 et seq. of this title:

1. Aircraft manufactured ~~within the state~~ under an FAA approved type certificate which are owned and in the physical possession of the manufacturers as provided in subsection D of Section 4 254 of this ~~act~~ title;
2. Aircraft owned by charitable organizations and used solely for the furtherance of charitable purposes;
3. Aircraft belonging to nonresidents of this state and registered in another state;
4. Aircraft of the federal government, any agency thereof, any territory or possession thereof, any state government or agency or political subdivision thereof, any aircraft of the Civil Air Patrol used solely in transaction of official business by a unit of the Civil Air Patrol;
5. Aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft; and
6. Aircraft not currently licensed or holding a current airworthiness certificate by the Federal Aviation Administration.

SECTION 10. AMENDATORY 3 O.S. 1991, Section 254, is amended to read as follows:

Section 254. A. Except as otherwise provided in this act, every owner or person in charge of an aircraft which shall be operated on or from any airport of any type in this state shall for each such aircraft cause to be filed by mail or otherwise with

the Oklahoma Tax Commission a certified application for registration of same, on a form to be furnished for that purpose, containing:

1. A description of each aircraft to be registered including the name of the manufacturer, aircraft registration number, type and gross weight; and

2. The name and address of the owner of such aircraft and the county where aircraft is based. The legal basis for determining the county where said aircraft is based shall be the location and/or address on the Federal Aviation Administration Certificate of Registration for said aircraft.

B. Registration requirements shall not apply to aircraft based or operated in the state for less than thirty (30) days.

C. 1. All dealers in the sale of aircraft shall be exempt from registration requirements upon purchase of an "exemption license" from the Oklahoma Tax Commission, cost of which shall be Two Hundred Fifty Dollars (\$250.00). This exemption shall not apply to dealers' personal aircraft. The payment of the fee prescribed by this subsection shall be treated as a payment in lieu of any ad valorem tax upon the value of aircraft owned by the dealer.

2. Dealers' "sales aircraft" shall be exempt from payment of ad valorem tax and registration fees and taxes as provided in Section 256 of this title upon certification to the Oklahoma Tax Commission that each particular aircraft is used for delivery and demonstration purposes only.

D. All manufacturers of aircraft shall be exempt from registration requirements upon purchase of an "exemption license" from the Oklahoma Tax Commission, cost of which shall be Two Hundred Fifty Dollars (\$250.00). The payment of the fee prescribed by this subsection shall be treated as a payment in lieu of any ad valorem tax upon the value of aircraft owned by the manufacturer.

E. Registrants not having purchased registration certificates in January will be penalized at the rate of twenty cents (\$0.20) per day in February and doubled on the first day of March.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 6003, as last amended by Section 49, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1993, Section 6003), is amended to read as follows:

Section 6003. The following aircraft shall be exempt from provisions of this article:

1. Aircraft manufactured ~~within this state~~ under an F.A.A. approved certificate and which are owned and in the physical possession of the manufacturer of said aircraft. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

2. Aircraft owned by dealers and in the dealer's inventory, not including aircraft that are used personally or for business. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

3. Aircraft of the federal government, any agency thereof, any territory or possession, any state government, agency, or political subdivision thereof;

4. Aircraft transferred from one corporation or limited liability company to another corporation or limited liability company pursuant to reorganization of the corporation or limited liability company. For the purpose of this section the term reorganization means a statutory merger, consolidation, or acquisition;

5. Aircraft purchased outside this state and brought into the state to be used by commercial airlines;

6. Aircraft transferred in connection with the dissolution or liquidation of a corporation or limited liability company and only if included in a payment in kind to the shareholders or members;

7. Aircraft transferred to a corporation for the purpose of organizing such corporation. However, the former owners of the aircraft must have control of the corporation in proportion to their interest in the aircraft prior to the transfer;

8. Aircraft transferred to a partnership or limited liability company when the organization of the partnership or limited liability company is by the former owners of the aircraft.

However, the former owners of the aircraft must have control of

the partnership in proportion to their interest in the aircraft prior to the transfer;

9. Aircraft transferred from a partnership or limited liability company to the members of the partnership or limited liability company and if made in payment in kind in the dissolution of the partnership;

10. Aircraft transferred or conveyed to a partner of a partnership or shareholder or member of a limited liability company or other person who after such sale owns a joint interest in the aircraft and on which the sales or use tax levied pursuant to the provisions of this title or the excise tax levied pursuant to the provisions of Section 6002 of this title have previously been paid on the aircraft;

11. Aircraft on which a tax levied pursuant to the provisions of the laws of another state, equal to or in excess of the excise tax levied by Section 6002 of this title, has been paid by the person using the aircraft in this state. Aircraft on which a tax levied pursuant to the laws of another state, in an amount less than the excise tax levied by Section 6002 of this title, has been paid by the person using the aircraft in this state shall be subject to the levy of the excise tax at a rate equal to the difference between the rate of tax levied by Section 6002 of this title and the rate of tax levied by the other state;

12. Aircraft when legal ownership of such aircraft is obtained by the applicant for a certificate of title by inheritance;

13. Aircraft when legal ownership of such aircraft is obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided for by law;

14. Aircraft which is transferred between husband and wife or parent and child where no valuable consideration is given;

15. Aircraft which is purchased by a resident of this state and used exclusively in this state for agricultural spraying purposes; provided, if such aircraft is sold, leased or used outside this state or for a purpose other than agricultural spraying at any time within three (3) years from the date of

purchase, the excise tax levied pursuant to the provisions of Section 6002 of this title shall be due and payable. For purposes of this subsection, "agricultural spraying" means the aerial application of any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants and animals;

16. Aircraft manufactured in the State of Oklahoma with a selling price in excess of Five Million Dollars (\$5,000,000.00);

17. Aircraft which have a selling price in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and which are transferred to a purchaser who is not a resident of this state for immediate transfer out of state; and

18. Aircraft which is transferred without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke.

SECTION 12. This act shall become effective July 1, 1994.

SECTION 13. 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.

44-2-L9923 MAH