

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2627

By: Bonny, Benson, Beutler,
Ferguson, Rice, Sadler
and Widener of the House

and

Capps and Stipe of the
Senate

COMMITTEE SUBSTITUTE

An Act relating to economic development incentives for former military facilities; amending 68 O.S. 1991, Section 2357.7, which relates to the Oklahoma Income Tax Code; amending 62 O.S. Sections 690.2 and 690.4, as amended by Section 48, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 690.4), which relate to the Oklahoma Enterprise Zone Act; providing for income tax credit for investment in qualified venture capital companies based upon usage of invested funds in business enterprises locating at former military facilities; defining term; requiring segregation of funds by venture capital companies; providing for deduction by certain venture capital companies based upon income generated from business activities conducted at former military facilities; providing test for determination of location of business activity at former military facility; modifying definitions used in the Oklahoma Enterprise Zone Act; adding definition of former military facility; providing various incentives for enterprises locating within former military facilities; providing income tax credit; providing income tax deductions; providing exemption from sales and use taxes for certain purchases; providing franchise tax exemption; providing motor vehicle excise tax exemption; providing motor fuel tax exemption; providing aircraft registration fee and excise tax exemptions; specifying circumstances under which tax benefits available; imposing time limitations upon eligibility for tax benefits; specifying duration of tax benefits; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 2357.7, is amended to read as follows:

Section 2357.7 A. For taxable years beginning after December 31, 1986, and before January 1, 1999, there shall be allowed a

credit against the tax imposed by Section 2355 of this title or Section 624 of Title 36 of the Oklahoma Statutes for investments in qualified venture capital companies whose purpose is to establish or expand the development of business and industry within Oklahoma. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury.

B. For purposes of this section:

1. "Qualified venture capital company" means a C corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma or a registered business partnership with a certificate of partnership filed as required by law if such corporation or partnership is organized to provide the direct investment of debt and equity funds to companies within this state, with its principal place of business located within this state and which meets the following criteria:

- a. Capitalization of not less than Five Million Dollars (\$5,000,000.00),
- b. Having a purpose and objective of investing at least fifty-five percent (55%) of its capitalization in Oklahoma business ventures. Investment capital received by such venture capital company shall be invested pursuant to said objective within five (5) years after receipt of such capital. Provided, of the fifty-five percent (55%) of capitalization required to be invested, ten percent (10%) of capitalization may be reserved for additional investment, within ten (10) years after receipt of capital, in portfolio companies which are Oklahoma business ventures. The temporary investment of funds by a qualified venture capital company in obligations of the United States, state and municipal bonds, bank certificates of deposit, or

money market securities pending investment in Oklahoma business ventures is hereby authorized, and

c. Investment of not more than ten percent (10%) of its funds in any one company;

2. "Oklahoma business venture" means a business, incorporated or unincorporated, which:

a. has or will have, immediately after a loan or investment is made by a qualified venture capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,

b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services, and

c. is not engaged in oil and gas exploration, real estate development, real estate sales, retail sales of food or clothing, farming, ranching, banking, or lending or investing funds in other businesses. Provided, however, businesses which provide or intend to provide goods or services, including, but not limited to, goods or services involving new technology, equipment, or techniques to such businesses listed in this subparagraph, and investments in the development of tourism facilities in the form of amusement parks, entertainment parks, theme parks, golf courses, or museums shall not be subject to said prohibition;

3. "Direct investment" means the purchase of securities of a private company, or securities of a public company if the securities constitute a new issue of a public company and such public company had previous year sales of less than Ten Million Dollars (\$10,000,000.00); and

4. "Debt and equity funds" means investments in debt securities; including unsecured, undersecured, subordinated or convertible loans or debt securities; and/or equity securities, including common and preferred stock, royalty rights, limited

partnership interest, and any other securities or rights that evidence ownership in businesses.

C. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified venture capital companies. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a qualified venture capital company and to certify an investment to be a qualifying Oklahoma business venture for purposes of complying with subsection B of this section. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward as a credit against subsequent tax liability for a period not to exceed three (3) years. No investor in a venture capital company organized after July 1, 1992, may claim tax credits under the provisions of this section.

D. No taxpayer may claim the credit provided for in subsection A of this section for investments in qualified venture capital companies made prior to January 1, 1987.

E. No investor whose capital is guaranteed by the Oklahoma Capital Investment Board may claim or transfer the credit provided for in subsection A of this section for investments in such guaranteed portfolio.

F. The credit provided for in subsection A of this section, to the extent not previously utilized, shall be freely transferable to and by subsequent transferees for a period of three (3) years from the date of investment.

G. For taxable years beginning after December 31, 1993, and before January 1, 1999, there shall be allowed a credit against the tax imposed by Section 2355 of this title in the amount of thirty-five percent (35%) of the amount invested in a qualified

venture capital company to the extent such funds are used by a qualified venture capital company to capitalize or assist in the capitalization of a business entity which locates its principal operations or activities at a former military facility. As used in this subsection, "former military facility" shall mean any tract or parcel of real property title to which was:

1. Prior to the date as of which the business entity acquires its interest in such real property previously vested in the United States Government or any branch of the Armed Forces of the United States of America;

2. Used primarily for a military purpose while title was so vested whether such use was made during a state of war, armed conflict or during peace time;

3. Subsequently conveyed 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.

H. In order for the credit to be granted, the funds invested in a qualified venture capital company must be kept segregated from other funds held by the qualified venture capital company for any other investments or purposes. The qualified venture capital company shall be required to file an annual report with the Oklahoma Tax Commission disclosing the name and social security number or other taxpayer identification number of the person or entity who has made the investment for which the credit authorized by subsection G of this section was made with the venture capital company. The credit may be taken for the taxable year in which the investment was made even if the venture capital company has not made use of the funds provided during such taxable year.

I. A qualified venture capital company to which funds are paid as provided by subsection G of this section shall be entitled to a deduction equal to one hundred percent (100%) of the amount of income which would otherwise be subject to income tax upon such company, or upon the partners of such company if the venture capital company is not a corporation, generated from the

investment of funds held by it in or for the benefit of a business entity which locates its principal operations or activity at a former military facility as defined by subsection G of this section. Such deduction may be taken for taxable years ending after December 31, 1993, and beginning before January 1, 1999. For tax years beginning on and after January 1, 1999, the amount of the deduction authorized by this subsection shall be fifty percent (50%) of the amount of income which would otherwise be subject to income tax upon such venture capital company, or upon the partners in such company, as applicable, generated from the investment of funds held by such company in or for the benefit of a business entity which locates its principal operations or activity at a former military facility as defined by subsection G of this section.

J. For purposes of subsections G through I of this section, a business entity shall be deemed to have located at a former military facility if it acquires a fee simple estate in the real property or if the business entity becomes obligated to occupy such real property for a term of at least five (5) years. If a business entity relocates and disposes of the real property at a former military facility or ceases to occupy such real property, then the deduction provided by subsection I of this section to a qualified venture capital company shall not be allowed for any income generated from the investment in or for the benefit of the business entity after the date as of which the real property is no longer owned by the business entity or the date as of which the business entity terminates its obligations under a lease.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 690.2, is amended to read as follows:

Section 690.2 For the purposes of Section 690.1 et seq. of this title:

1. "Authority" means an "Enterprise District Management Authority" created pursuant to Section 690.7 of this title;

2. "Building" means a structure consisting of a foundation, walls, roof and other parts necessary to its occupation; provided

however, it shall not include a structure intended to be used for residence purposes;

3. "Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship or corporation;

4. "Enterprise district" means at least three but not more than six contiguous enterprise zones formed for the purpose of issuing general obligation bonds;

5. "Enterprise zone" means:

a. a county which meets the following criteria:

(1) has an average unemployment rate of over one and one-half (1 1/2) times the state average for a twelve-month period as determined by the Oklahoma Department of Commerce based upon data from the Oklahoma Employment Security Commission, or

(2) at the time of said determination by the Oklahoma Department of Commerce based upon data from the Oklahoma Employment Security Commission is designated as a labor surplus area by the United States Secretary of Labor pursuant to 15 U.S.C.A., Section 644(n), or

(3) has for three (3) consecutive months or more a fifty percent (50%) or greater increase over its average unemployment rate for the previous calendar year, as determined by the Oklahoma Department of Commerce based upon data from the Oklahoma Employment Security Commission; provided said increase results in an unemployment rate that exceeds the state average unemployment rate for the previous calendar year, or

(4) those counties that have an unemployment rate that exceeds the state average unemployment rate for a twelve-month period as determined by the Department of Commerce based on data from the

Employment Security Commission and a net population out-migration of four percent (4%) or greater for the period of 1980 to 1988 as determined by the Department of Commerce, or (5) those counties that have an average population decrease of ten percent (10%) or greater based on data from the latest two federal decennial censuses as determined by the Oklahoma Department of Commerce, ~~or~~

- b. an area within or contiguous to the corporate limits of any city or town of this state which the Oklahoma Department of Commerce approves, upon application, as an area of economic distress as determined by its guidelines which include the fact that a majority of the households within the specified area have an income of less than eighty percent (80%) of the median income of this state as specified in this act; ~~or,~~
- c. an area designated as a federal enterprise zone as provided by Section 690.3 of this title; or
- d. any tract or contiguous tracts of real property, whether platted or not, and whether subject to any zoning law, ordinance, rule or regulation located in an area which is a former military facility. As used in this subparagraph, "former military facility" shall mean any tract or parcel of real property title to which was:
 - (1) prior to the effective date of this act vested in the United States Government or any branch of the Armed Forces of the United States of America,
 - (2) used primarily for a military purpose while title was so vested whether such use was made during a state of war, armed conflict or during peace time, and

(3) subsequently conveyed 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;

6. "Equipment" means machinery necessary to the construction or manufacture of products for resale;

7. "Expand" means to make expenditures to add land, buildings, machinery, equipment or other materials, except inventory, to a facility that equal at least ten percent (10%) of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation;

8. "Facility" means an enterprise's place of business in an enterprise zone, including land, buildings, machinery, equipment and other materials, except inventory used in business.

"Facility" does not include an establishment used primarily for making retail sales;

9. "Full-time employee" means an individual who is employed for consideration by an enterprise for at least thirty-five (35) hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment;

10. "New employee" means a full-time employee first employed by an enterprise at a facility after the designation of an enterprise zone;

11. "Position" means the position of one full-time employee performing a particular set of tasks and duties;

12. "Priority Enterprise Zones" means enterprise zones which are selected to receive additional resources or programs after meeting the criteria specified in this act;

13. "Project" means any undertaking by an enterprise to establish a facility or to improve a facility by expansion, in an enterprise zone or enterprise district;

14. "Responsible tenant" means any person, partnership, firm, company or corporation whether organized for profit or not deemed by the Authority, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the Authority in the leasing of any building or equipment on which the Authority has a loan outstanding; and

15. "Renovate" means to make expenditures to alter or repair a facility that equal at least fifty percent (50%) of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 690.4, as amended by Section 48, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1993, Section 690.4), is amended to read as follows;

Section 690.4 A. The following incentives and initiatives shall be available to qualified enterprises:

1. Two times the amount of investment tax credits as provided in Section 2357.4 of Title 68 of the Oklahoma Statutes;

2. Sales tax exemptions for certain manufacturers as provided in Section 1359 of Title 68 of the Oklahoma Statutes; and

3. Low interest loans as provided in Section 690.16 of this title.

B. Any enterprise moving into an enterprise zone on or after the effective date on which the enterprise zone is designated may benefit from the incentives and initiatives set forth in this section provided the enterprise meets the requirements established in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes. An enterprise located within an enterprise zone before the date on which the enterprise zone is designated may benefit from the incentives and initiatives set forth in this section with respect to any project or any expansion of its labor force occurring after the date on which the enterprise zone is designated. For purposes of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to the effective date of this act, located in an area that was designated as an enterprise zone at the time any official action was taken by a public trust or private funds with respect to location of such business in a

county, city or town designated as the beneficiary of such public trust or private funds, shall be entitled to such benefit for any taxable year during which such business was located and operating in the area regardless of any changes in the designation of the area as an enterprise zone resulting from a change in employment levels. For purposes of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to the effective date of this act, located in an area that was not designated as an enterprise zone at the time of location of the business but such area has since been designated as an enterprise zone by the Oklahoma Department of Commerce as a result of the area's location in County 115, Tract 9746, Block Group 4 of the 1990 decennial census, shall be entitled to such benefit for any taxable year during which such business was located and operating in the location regardless of designation of the area in which the business located as an enterprise zone area after the date of initial location of the business.

C. The low interest loans set forth in this section shall be available for a period of five (5) years following the date on which the county or area within the corporate limits of a city or town is designated an enterprise zone, or until said county or area no longer qualifies as an enterprise zone.

D. The other incentives and initiatives set forth in this section shall be subject to the limitations provided in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes.

E. For an enterprise which locates within an enterprise zone which is defined as a former military facility by the provisions of Section 690.2 of this title, the following incentives and initiatives shall be available:

1. For taxable years beginning after December 31, 1993, three times the amount of income tax credit for investment in qualified property which would otherwise be available pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes;

2. For taxable years beginning after December 31, 1993, a deduction from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for two hundred percent (200%) of the

acquisition cost for any real property located in a former military facility and occupied by the enterprise as its principal place of business activity;

3. For taxable years beginning after December 31, 1993, a deduction from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for two hundred percent (200%) of the amount of any rental payments for any real property located in a former military facility occupied by the enterprise as its principal place of business activity;

4. For taxable years beginning after December 31, 1993, and beginning prior to January 1, 1999, a deduction from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for two hundred percent (200%) of the amount of any rental or lease payments for any type of personal property used by the enterprise in its principal business activity;

5. For taxable years beginning after December 31, 1993, and beginning prior to January 1, 1999, a deduction from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for two hundred percent (200%) of the acquisition cost of any tangible personal property used by the enterprise in its principal business activity;

6. For the period beginning January 1, 1994, and ending December 31, 1998, an exemption from the tax imposed by Section 1354 or Section 1402 of Title 68 of the Oklahoma Statutes for any purchases made of any tangible personal property for use in the construction of any new building or other structure or the improvement to any existing building or other structure located upon real property which is located within a former military facility as defined by Section 690.2 of this title;

7. An exemption from any tax which would be imposed by Section 1203 or Section 1204 of Title 68 of the Oklahoma Statutes for a period of five (5) years from the date the enterprise begins business operations at a location within a former military facility if such business activity is continuous during such period;

8. An exemption from the tax which would be imposed by Section 2103 of Title 68 of the Oklahoma Statutes for a period of five (5) years from the date upon which the enterprise first begins business operations at a location within a former military facility upon the transfer of title or first registration of any motor vehicle, which would be subject to such tax, used directly by the enterprise in its principal business activity if the vehicle is used primarily in connection with the activity conducted at the location of the enterprise within a former military facility;

9. An exemption from any tax which would otherwise be levied upon the withdrawal from storage, use, consumption, importation for use or other taxable basis of motor fuel as imposed by any provision of Article 5, Article 6 or Article 7 of Title 68 of the Oklahoma Statutes for a period of five (5) years from the date upon which the enterprise first begins business operations at a location within a former military facility;

10. An exemption from any registration fee imposed by the provisions of Section 253 of Title 3 of the Oklahoma Statutes upon any aircraft for a period of five (5) years from the date upon which the enterprise first begins business operations at a location within a former military facility if the aircraft used by the enterprise are housed, used or stored for at least fifty percent (50%) of the total ground time for the aircraft at the principal business location of the enterprise within a former military facility; and

11. An exemption from any excise tax which would otherwise be imposed by the provisions of Section 6002 of Title 68 of the Oklahoma Statutes upon the transfer of title of any aircraft for a period of five (5) years from the date upon which the enterprise first begins business operations at a location within a former military facility if the aircraft used by the enterprise are housed, used or stored for at least fifty percent (50%) of the total flight or ground storage time for the aircraft at the principal business location of the enterprise within a former military facility.

SECTION 4. This act shall become effective September 1, 1994.

44-2-9146 MAH