

SHORT TITLE: Revenue and taxation; Oklahoma Federal Facilities
Development Act; codification; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 518

By: Cullison, Fisher and
Hooper of the Senate

and

Johnson (Glen) and
McCorkell of the House

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1356, as amended by Section 1, Chapter 110, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1356), which relates to sales tax exemptions; creating the Oklahoma Federal Facilities Development Act; providing short title; stating legislative findings and intent; defining terms; authorizing political subdivision to receive certain incentive payments from Oklahoma Capital Investment Board and providing procedure; specifying amount of payments and providing certain limitations; specifying application procedure and providing for form; specifying duties of Department of Commerce; requiring certain notification to Oklahoma Tax Commission and Board; allowing requirement for submission of additional information; allowing and issuing credits in certain amount under certain circumstances; requiring Tax Commission to make certain transfer of funds; requiring Board to enter into certain contract; providing procedure for claim for incentive payment; providing for verification of certain information; providing procedure for

redemption of credits and specifying amount thereof; providing for issuance of warrants for payment to political subdivision; requiring political subdivision to deposit incentive payment in separate fund and specifying allowable uses thereof; authorizing certain investments and providing for deposit of interest therefrom; requiring certain audit and specifying requirements related thereto; requiring review of and report on audit by State Auditor and Inspector; providing for disposition of assets; authorizing certain agencies to promulgate rules necessary to implement act; authorizing Oklahoma Capital Investment Board to amend its indenture and exercise certain powers; providing that certain persons not be considered broker-dealers, agents, investment advisors or investment advisor representatives; providing that credits not be considered securities; providing that certain actions not affect guarantee of Oklahoma Capital Investment Board; exempting certain sales from sales tax; providing for codification; 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 3501 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Federal Facilities Development Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3502 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. It is the finding of the Legislature that there exists in this state a continuing need for programs to assist political subdivisions in attracting federal facility development and consequent job creation and ancillary economic growth within this state. In order to achieve these essential public purposes, it is necessary to assist and encourage political subdivisions to develop facilities for use by the federal government.

B. It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to assist political subdivisions of this state in attracting qualified federal facilities that hold the promise of significant development of the economy of the State of Oklahoma;

2. The amount of such incentives provided in connection with a particular federal facility:

- a. be directly related to the jobs created as a result of the facility locating in the State of Oklahoma, and
- b. not exceed the estimated net direct state benefits that will accrue to the state as a result of the facility locating in the State of Oklahoma; and

3. The Oklahoma Department of Commerce, the Oklahoma Tax Commission and the Oklahoma Capital Investment Board implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3503 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Qualified federal facility" means a facility developed after March 1, 1993, by or at the expense of a political subdivision of this state and leased or conveyed to the government of the United States which primarily houses federal employees; provided, the annual gross payroll for new direct jobs of a qualified federal facility must be projected by the Department of Commerce as having the potential to equal or exceed Fifty Million Dollars (\$50,000,000.00) when the facility is fully operational;

2. "New direct job" means full-time-equivalent employment in a qualified federal facility which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the political subdivision for the qualified federal facility pursuant to the provisions of Section 4 of this act;

3. "Estimated direct state benefits" means the tax revenues projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided, the net benefit rate shall not exceed the lesser of five and one-fourth percent (5.25%) or the minimum rate deemed by the Department of Commerce to be necessary to result in an incentive payment at a level which will enable the political subdivision to attract the qualified federal facility;

7. "Political subdivision" means a municipality, a county or a public trust, the beneficiary or beneficiaries of which are a municipality, a county or the State of Oklahoma or a combination thereof;

8. "Gross payroll" means wages for new direct jobs as defined in paragraph (e) of Section 2385.1 of Title 68 of the Oklahoma Statutes;

9. "Project term" means the length of time a political subdivision may receive incentive payments pursuant to the provisions of this act; provided, the project term shall not exceed twenty (20) years from the date of the first incentive payment;

10. "Total net benefit" means the net benefit rate multiplied by the gross payroll over the project term as estimated by the Department of Commerce pursuant to the provisions of subsection C of Section 4 of this act; and

11. "Develop" means acquire, maintain, construct, improve, enlarge, renew, renovate, replace, lease, equip, furnish or operate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3504 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A political subdivision may receive quarterly incentive payments from the Oklahoma Capital Investment Board pursuant to the provisions of this 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; provided, the total amount of such payments shall not exceed the total net benefit.

B. In order to receive incentive payments pursuant to the provisions of this act, a political subdivision shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department.

C. The Department shall determine if the applicant is qualified to receive incentive payments pursuant to the provisions of this act and if so, conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate and to estimate the amount of gross payroll for the project term. 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, qualitative factors, and such other criteria as deemed appropriate by the Department.

D. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and the Oklahoma Capital Investment Board and shall provide each with a copy of the application and the results of the cost/benefit analysis. The Tax Commission or the Oklahoma Capital Investment Board may require the political subdivision or the qualified federal facility to submit such additional information as may be necessary to administer the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3505 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon notification of an approved application, credits in the amount of the total net benefit shall be allowed and deemed issued and transferred to the Oklahoma Capital Investment Board.

B. In order to ensure the availability of funds for incentive payments authorized pursuant to the provisions of this act, the Oklahoma Tax Commission shall transfer such amounts as determined by multiplying the net benefit rate provided by the Department of Commerce by the gross payroll as determined pursuant to the provisions of subsection B of Section 6 of this act. Such funds shall be transferred from current withholding tax collections into an agency special account designated for this purpose by the Oklahoma Tax Commission at such times as may be deemed necessary by the Tax Commission.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3506 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon notification of an approved application, the Oklahoma Capital Investment Board shall enter into a contract with the political subdivision for payment of incentives pursuant to the provisions of this act.

B. As soon as practicable after the end of a calendar quarter for which a political subdivision has qualified to receive an incentive payment, the political subdivision shall file a claim for the payment with the Oklahoma Capital Investment Board and shall specify the actual number and gross payroll of new direct jobs for the calendar quarter. The Oklahoma Capital Investment Board shall request the Oklahoma Tax Commission to verify the actual gross payroll for new direct jobs for such calendar quarter. The Tax Commission shall notify the Oklahoma Capital Investment Board of such verification. If the Tax Commission is not able to provide such verification, the Tax Commission or the Board may request such additional information from the political subdivision as may be necessary or may request the political subdivision to revise its claim.

C. As soon as practicable after such verification, the Board shall redeem credits issued pursuant to the provisions of subsection A of Section 5 of this act from the Tax Commission in the amount of the net benefit rate multiplied by the actual gross payroll as verified by the Oklahoma Tax Commission for the calendar quarter and shall issue a warrant in such amount to the political subdivision. The Tax Commission shall transfer such amount to the Board from the account designated pursuant to the provisions of subsection B of Section 5 of this act. If credits are redeemed in excess of the amount held by the Tax Commission in the account designated pursuant to the provisions of subsection B of Section 5 of this act, the Tax Commission shall transfer such funds as may be necessary to redeem such credits from current withholding tax collections.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3507 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A political subdivision receiving an incentive payment pursuant to the provisions of this act shall deposit such payment in a separate fund and shall not be permitted to use such monies for any purpose other than payment of expenses directly associated with a qualified federal facility. Such expenses shall be limited to those incurred in:

1. Developing a qualified federal facility;
2. Developing public improvements or facilities related to the qualified federal facility;
3. Paying principal, interest and premium, if any, due on bonds, obligations or other evidences of indebtedness incurred in the development of a qualified federal facility, plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds, obligations or other evidences of indebtedness incurred to develop a qualified federal facility or to develop public improvements or facilities related to the qualified federal facility; or
4. Paying any other expenses required to be paid by the political subdivision pursuant to the agreement by which the qualified federal facility is leased or conveyed to the government of the United States.

A political subdivision shall be permitted to invest the monies accruing to such fund in such manner as is authorized by law for investment of other monies of the political subdivision; provided, the interest earned from such investments shall be deposited to the fund and shall be used solely for payment of expenses directly associated with a qualified federal facility.

B. A political subdivision receiving an incentive payment pursuant to the provisions of this act shall annually cause an

independent financial audit of such fund to be made and shall submit such audit to the Department of Commerce, the Oklahoma Tax Commission, the Oklahoma Capital Investment Board and the State Auditor and Inspector. The State Auditor and Inspector shall review such audit and report his findings to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

C. At the end of the project term or at the end of the period of time for which the qualified federal facility is leased or conveyed to the government of the United States, whichever is later, any assets of the qualified federal facility owned by the political subdivision, including, but not limited to any property or any monies remaining in the fund created pursuant to the provisions of subsection A of this section, shall be disposed of between the political subdivision and the state according to the proportions of funding provided by the state through incentive payments authorized by this act and funding provided by the political subdivision.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3508 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Department of Commerce, the Tax Commission and the Oklahoma Capital Investment Board shall promulgate such rules as may be necessary to implement the provisions of this act.

B. The Oklahoma Capital Investment Board may amend its indenture to encompass the provisions of this act and, upon certification by the Governor, shall, in addition to powers granted to it under any other statute, exercise all powers authorized for it as provided by this act.

C. For purposes of implementing the provisions of this act, neither the Oklahoma Capital Investment Board nor any of its trustees, officers, directors or employees shall be considered to be broker-dealers, agents, investment advisors or investment advisor

representatives under Title 71 of the Oklahoma Statutes. The credits transferred pursuant to this act shall not be considered to be securities under Title 71 of the Oklahoma Statutes.

D. The level, timing and degree of success of the Oklahoma Capital Investment Board in mobilizing or ensuring investment in Oklahoma businesses or projects, accomplishing other economic development objectives or achieving any other statutory duty shall not compromise, diminish, invalidate or affect the enforceability of any guarantee of the Board.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 1356, as amended by Section 1, Chapter 110, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by this article:

(A) Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

(B) Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

(C) Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as such terms are defined in Section 3 of this act, and if

ownership and possession of such property transfers immediately to the political subdivision;

(D) Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

~~(D)~~ (E) Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

~~(E)~~ (F) Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

~~(F)~~ (G) Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business;

~~(G)~~ (H) The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but

are not limited to, athletic fields, athletic stadiums, field houses, amphitheatres and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

~~(H)~~ (I) Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

~~(I)~~ (J) Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education and the Grand River Dam Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

~~(J)~~ (K) Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State

Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of ~~Section 501(c)(3) of~~ the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph ~~(I)~~ (J) of this section;

~~(K)~~ (L) Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of ~~Section 501(c)(3) of~~ the Internal Revenue Code, Section 501(c)(3);

~~(I)~~ (M) Sales of tangible personal property made by:

1. A public school;
2. A private school offering instruction for grade levels kindergarten through twelfth grade;
3. A public school district;
4. A public or private school board;
5. A public or private school student group or organization;
6. A parent-teacher association or organization; or

7. Public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization.

The exemption provided by this subsection for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

~~(M)~~ (N) The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of ~~Section 501(c)(4)~~ of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

~~(N)~~ (O) Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

~~(O)~~ (P) Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax

involved or incarcerated for not more than sixty (60) days, or both;
and

~~(P)~~ (Q) Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a municipality with municipal employees.

SECTION 10. 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.

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