

ENGROSSED SENATE
BILL NO. 568

By: Kerr and Gustafson of the
Senate

and

Kinnamon of the House

[taxation and economic development - amending
Sections of Title 62 O.S. - Local Development Act -
tax incentive - historic route re-creation areas -
creating special fund - codification -
noncodification - effective date -
emergency]

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

SECTION 1. It is the intent of the Oklahoma Legislature that the historical importance of old U.S. Route 66 be showcased through development of a coordinated program of tourism, education, transportation and economic development along the length of the highway. The goal of the program shall be to re-create the atmosphere of the decades of the 1930s, 1940s, 1950s and 1960s along segments of the highway, which would serve as a tourist attraction, as a tool for education on the history of the twentieth century, as locations for movies to be filmed or other artistic purposes and for other purposes. To this end, it is the further intent of the Oklahoma Legislature that the directive to the Oklahoma Tourism and Recreation Department, the Department of Transportation, the Oklahoma Historical Society and the Oklahoma Department of Commerce to provide technical assistance to coordinate community efforts in

promotion, interpretation and economic development enhancement along old U.S. Route 66, as mandated by Enrolled House Joint Resolution No. 1029 of the 1st Session of the 42nd Oklahoma Legislature, be further enhanced by the lawful utilization of current economic development statutes, including but not limited to, the Local Development Act, Section 850 et seq. of Title 62 of the Oklahoma Statutes, which implements and executes Section 6C of Article X of the Oklahoma Constitution.

SECTION 2. AMENDATORY Section 4, Chapter 342, O.S.L. 1992 (62 O.S. Supp. 1994, Section 853), is amended to read as follows:

Section 853. As used in ~~this act~~ the Local Development Act:

1. "Apportionment" means the direction by a governing body, authorized by the Legislature pursuant to Section 6C of Article X of the Oklahoma Constitution, to apply all or any portion of an increment of ad valorem taxes and all or any portion of sales taxes, other local taxes or local fees, or any combination thereof, to financing a plan and project in accordance with this act;

2. "Apportionment area" means the same as an increment district as defined under this act;

3. "Bonds" means evidences of indebtedness, tax apportionment bonds or other obligations issued by a public entity pursuant to the provisions of Section ~~14~~ 863 of this ~~act~~ title to finance project costs, pursuant to a project plan, which are to be repaid in whole or part with apportioned increments;

4. "District" means either an incentive district as authorized by Section ~~11~~ 860 of this ~~act~~ title or an increment district as authorized by Section ~~12~~ 861 of this ~~act~~ title. A district may consist of all or a portion of a project area;

5. "Enterprise area" means any area within a designated state or federal enterprise zone;

6. "Enterprise zone" means an enterprise zone as designated by the Department of Commerce pursuant to the provisions of Section 690.3 of this title or as designated by the federal government;

7. "Governing body" means the city council of a city, the board of trustees of a town or the board of county commissioners;

8. "Historic preservation area" means a district listed in or nominated by the State Historic Preservation Officer to the National Register of Historic Places or an historic structure or structures listed individually in or nominated by the State Historic Preservation Officer to the National Register of Historic Places, with such district or structure being subject to historic preservation zoning. Rehabilitation undertaken in an historic preservation area shall meet the Secretary of the Interior's Standards for Rehabilitation, latest revision, in order to be eligible for the incentives or exemptions granted pursuant to Section ~~44~~ 860 of this ~~act~~ title;

9. "Historic route re-creation area" means a project area contiguous to a road or highway designated as a historic route by the Oklahoma Transportation Commission pursuant to a joint resolution of the Oklahoma State Legislature for which an association has been formed for the purpose of re-creating the atmosphere of a certain time period appropriate to the historic route through the alteration, remodeling, reconstruction or construction of streets, structures and fixtures within the area and the adoption of ordinances and covenants to govern the activity within the area. For purposes of the Local Development Act, the costs of altering, remodeling, reconstructing or constructing such streets, structures and fixtures shall be deemed project costs;

10. "Increment" means that portion of ad valorem taxes in excess of the amount of that portion of the taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the district

or as to an area later added to the district, the effective date of the modification of the plan, or that portion of sales taxes, other local taxes or local fees collected each year reasonably determined by a formula approved by the governing body to be generated by the project, which may be apportioned for specific project costs or as a specific revenue source for other public entities in the area in which the project costs take place;

~~10.~~ 11. "Local taxes" means ad valorem taxes, sales taxes and other local taxes which are levied by or on the behalf of a taxing entity;

~~11.~~ 12. "Planning commission" means an organization established for local planning by local government or governments in accordance with the laws of this state;

~~12.~~ 13. "Project" means any public project in furtherance of the objectives of the project plan;

~~13.~~ 14. "Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred which are listed in the project plan as costs of and incidental to public works or improvements and public buildings within a designated district. Any income, special assessments, or other revenues received, or reasonably expected to be received, by the city, town or county in connection with the implementation of the project plan shall be used to pay project costs. Project costs include, but are not limited to:

- a. capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new public buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment for public works, public

- improvements and public buildings and the clearing and grading of such land and environmental remediation related thereto,
- b. financing costs, including interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity,
 - c. real property assembly costs, including clearance and preparation costs,
 - d. professional service costs, including those incurred for architectural, planning, engineering, legal and financial advice and services,
 - e. direct administrative costs, including reasonable charges for the time spent by employees of the city, town or county in connection with the implementation of a project plan or employees of private entities under contract with a public entity for project planning or implementation,
 - f. organizational costs, including the costs of conducting environmental impact studies or other impact studies, the cost of publicizing the consideration of the project plan, costs incidental to creation of the district, and the cost of implementing the project plan for the district,
 - g. interest, before and during construction and for two (2) years after completion of construction, whether or not capitalized,
 - h. fees for bond guarantees, letters of credit and bond insurance,
 - i. the amount of any contributions offset made in connection with the implementation of the plan,

- j. the costs for determining or redetermining the base assessed value of a district,
- k. costs of construction of public works or improvements, including but not limited to highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, parks, water distribution and supply systems, curbing, sidewalks and any similar public improvements, common utility or service facilities, landscaping, parking, and water detention/retention systems,
- l. all or a portion of another taxing jurisdiction's capital costs resulting from the development or redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the plan and project, to the extent the governing body by written agreement accepts and approves such costs, and
- m. relocation costs to the extent that a governing body determines that relocation costs shall be paid or are required to be paid by federal or state law;

~~14.~~ 15. "Project plan" means the approved plans of a city, town or county which may include a designated district or districts under this act in conformance with its comprehensive plan, which is intended by the payment of costs through apportionment of the increment or by the granting of incentives or exemptions to reduce or eliminate those conditions, the existence of which qualified the district, and to thereby enhance private investment of the tax bases of the taxing entities which extend into the district. Project plans may be a part of and incorporate existing neighborhood, renewal, economic development and other such plans. Each project plan shall conform to the requirements specified by this act;

~~15.~~ 16. "Public entity" means any city, town, county, board, commission, authority, district or public trust;

~~16.~~ 17. "Reinvestment area" means any area located within the limits of a city, town or county requiring public improvements to reverse economic stagnation or decline, to serve as a catalyst for retaining or expanding employment, to attract major investment in the area or to preserve or enhance the tax base or in which fifty percent (50%) or more of the structures in the area have an age of thirty-five (35) years or more. Such an area is detrimental to the public health, safety, morals or welfare. Such an area may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. Such an area includes a blighted area as defined in Section 38-101 of Title 11 of the Oklahoma Statutes at the time of approval of the project plan; and

~~17.~~ 18. "Taxing entity" means a city, town, county, school district, political subdivision or other local entity in which local taxes or fees are levied by or on its behalf.

SECTION 3. AMENDATORY Section 7, Chapter 342, O.S.L. 1992 (62 O.S. Supp. 1994, Section 856), is amended to read as follows:

Section 856. A. The governing body shall designate and adopt the proposed boundaries of any district and the proposed boundaries of any project. Except as otherwise provided in this subsection, any districts created by a city or town shall be confined to that territory within the corporate limits of such city or town and any districts created by a county shall be confined to that territory within the unincorporated areas of the county. Any city, town or county may by agreement jointly create a contiguous district with

another entity, including a district which incorporates a historic route re-creation area.

B. Upon the adoption and approval of the project plan, the governing body shall adopt an ordinance or resolution, whichever is applicable, which:

1. Describes the boundaries of districts and projects sufficiently definite to identify with ordinary and reasonable certainty the territory included in it;

2. Creates the district as of a date provided in it;

3. Assigns a name to the district for identification purposes.

The first district created shall be known as either an Incentive District or Increment District Number One, City, Town or County of _____, whichever is applicable. Each subsequently created district shall be appropriately named and shall be assigned the next consecutive number; and

4. Contains findings that:

a. the project area or district meets at least one of the following criteria:

(1) is a reinvestment area,

(2) is a historic preservation area,

(3) is a historic route re-creation area,

(4) is an enterprise area, or

~~(4)~~ (5) is a combination of the areas specified in divisions (1), (2), (3) and ~~(3)~~ (4) of this ~~paragraph~~ subparagraph,

b. the improvement of the area is likely to enhance the value of other real property in the area and to promote the general public interest. It shall not be necessary to identify the specific parcels meeting the criteria,

c. the guidelines specified in paragraphs 1 and 2 of Section ~~3~~ 852 of this ~~act~~ title shall be followed,

- d. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section ~~13~~ 862 of this ~~act~~ title within the city or town shall not exceed twenty-five percent (25%) of the total net assessed value of taxable property within the city or town for cities or towns having a population of fifty thousand (50,000) or more or shall not exceed thirty-five percent (35%) of the total net assessed value of taxable property within the city or town for cities or towns having a population of less than fifty thousand (50,000),
- e. for projects approved by a county, the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section ~~13~~ 862 of this ~~act~~ title within the county shall not exceed fifteen percent (15%) of the total net assessed value of the taxable property within the county,
- f. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section ~~13~~ 862 of this ~~act~~ title within the city, the town or the county shall not exceed twenty-five percent (25%) of the total net assessed value of any school district located within the city, town or county, and
- g. the land area of this district and all other districts within the city, the town or the county shall not exceed twenty-five percent (25%) of the total land area of the city, the town or the county.

SECTION 4. AMENDATORY Section 11, Chapter 342, O.S.L. 1992, as amended by Section 2, Chapter 183, O.S.L. 1994 (62 O.S. Supp. 1994, Section 860), is amended to read as follows:

Section 860. A. A project plan may contain a provision that certain local taxes may be subject to incentives or may be exempted in reinvestment areas, historic preservation areas, historic route re-creation areas, or enterprise areas.

B. The governing body may grant incentives or exemptions from local taxation only on the new investment made. No ad valorem tax incentives or exemptions may be granted on the value of property which has been assessed or which is subject to assessment prior to the adoption of the project plan. No ad valorem tax incentives or exemptions authorized in this section may be granted for retail establishments, except in historic route re-creation areas. If a retail establishment is located in property which otherwise qualifies for an incentive or exemption pursuant to this section, the incentive or exemption shall not be allowed for that portion of the property used for such retail establishment, except in historic route re-creation areas such incentive or exemption shall be allowed. As used in this subsection, "retail establishment" shall not include an establishment that provides lodging, including but not limited to a hotel, apartment hotel, public rooming house or motel. No ad valorem tax incentives or exemptions authorized in this section may be granted if the property is located in an increment district or if the property is subject to the ad valorem tax exemption for new or expanding manufacturing facilities as authorized by Section 6B of Article X of the Oklahoma Constitution. In the event of disposition by lease or sublease to a lessee not entitled to an ad valorem tax exemption, the improvements placed thereon shall not be entitled to an ad valorem tax exemption provided for in Section 850 et seq. of this title. The incentives or exemptions, which may be full or partial, may be granted for a period not to exceed five (5) years; however, in enterprise zones incentives or exemptions may be granted for a period not to exceed six (6) years; provided further, for historic route re-creation

areas the incentives or exemptions, including any ad valorem tax exemption, may be granted for a twenty-year period or less, ending December 31, 2015.

C. No incentives or exemptions may be granted to any business or firm that is relocating from within the state and is subject to or in the process of recruitment by two or more governmental entities within the state unless the governmental entity in which the business or firm does not locate adopts a resolution giving their approval to the granting of incentives or exemptions to the business or firm locating in the competing governmental entity. No incentives or exemptions may be granted to an out-of-state business or firm that is subject to or in the process of recruitment by two or more governmental entities within the state except as otherwise provided for in this subsection. The prohibition against incentives or exemptions to a business or firm relocating within the state may be waived upon application by the governing body to, and approval of, the Director of the Oklahoma Department of Commerce. In order for the Director to approve the waiver, the Director must find that the incentives or exemptions are necessary and sufficient to attract the business or firm and that the benefits generated by the business location outweigh the costs of the business location.

SECTION 5. AMENDATORY Section 12, Chapter 342, O.S.L. 1992 (62 O.S. Supp. 1994, Section 861), is amended to read as follows:

Section 861. A. A project plan may contain a provision that the increments from certain local taxes or fees may be used to finance project costs in areas qualified under this act, including historic route re-creation areas. The increment from local taxes or fees levied from and after the effective date of the approval of such plan shall be apportioned in the following manner for a period not to exceed twenty-five (25) years or the period required for payment of project costs, whichever is less:

1. That portion of the ad valorem taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the increment district determined pursuant to Section ~~13~~ 862 of this ~~act~~ title and as to an area later added to the increment district, the effective date of the addition to the increment district, shall be paid to each taxing entity and all or any portion of local sales taxes, other local taxes or local fees collected each year which are not subject to apportionment shall be paid or retained as otherwise provided by law; and

2. That portion of ad valorem taxes, in excess of such amount specified in paragraph 1 of this subsection, and all or any portion of the increment of local sales taxes, other local taxes or local fees, or a combination thereof, paid to or for the benefit of the city, town, or county approving the plan, and with its consent, evidenced by agreement in writing, all or any portion of the increment of local sales tax, other local taxes or local fees, or combination thereof, payable to any other local public entity, shall be apportioned to, and when collected, shall be paid into an apportionment fund established for the project pursuant to the project plan to be used for the payment of the project costs and for the payment of the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred to finance project costs, whether funded, refunded, assumed, or otherwise, for financing, in whole or in part, eligible project costs. Nothing shall prohibit the increments from being used to directly pay eligible project costs. When all eligible project costs and such bonds, loans, advances of money or indebtedness, if any, including interest thereon and any premiums due in connection with them, have been paid and the governing body adopts an ordinance or resolution dissolving the tax apportionment financing, all ad valorem taxes upon the taxable

property within the boundary of such district shall be paid into the funds of the respective taxing entities.

B. If a project plan contains a provision for apportionment as provided in subsection A of this section, and notwithstanding any other provision of law to the contrary, the governing body shall direct in the resolution or ordinance approving the plan which portion of the increments, including whether any or all, to be paid into the apportionment fund shall constitute a part of the general fund to be appropriated annually by the governing body, and which portion, including whether any or all, shall constitute funds of a public entity authorized to issue tax apportionment bonds or notes or to incur project costs.

C. To the extent that collections exceed project costs and the provisions for payment of principal and interest along with sufficient reserves on any bonds issued pursuant to the provisions of Section ~~14~~ 863 of this ~~act~~ title, the excess shall be paid into the funds of the respective taxing entities unless the taxing entity agrees to some other use of such collections.

D. Except as provided in subsection E of this section, for any year in which taxes or fees are apportioned in the manner specified in paragraph 2 of subsection A of this section, any increase in assessed valuation of taxable real property within the boundaries of such district in excess of the base assessed value shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except for the levy of taxes and in determining the amount to be apportioned.

E. In the event there is a general reassessment of ad valorem tax property valuations of any property within the boundaries of an increment district, the portions of valuations for assessment pursuant to paragraphs 1 and 2 of subsection A of this section shall be proportionately adjusted in accordance with such reassessment.

F. Nothing in this section shall be construed as relieving property in such project area from being assessed as provided in the Ad Valorem Tax Code of the Oklahoma Statutes, or as relieving owners of such property from paying a uniform rate of taxes, as required by Section 5 of Article X of the Oklahoma Constitution.

G. If property in an increment district is owned by a public trust or public entity and is leased for a private use, the lease shall require the private user to pay ad valorem taxes or an in lieu ad valorem tax payment, whichever is appropriate, on the value of the leasehold.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3901 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 6 through 10 of this act shall be known and may be cited as the "Historic Route Targeted Tourism Incentive Program Act".

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3902 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in Sections 6 through 10 of this act:

1. "Targeted tourism establishment" means an establishment located within a historic route re-creation area as defined in Section 853 of Title 62 of the Oklahoma Statutes:

- a. eating and drinking places, as defined or classified under Major Group 58 of the SIC Manual, latest version,
- b. miscellaneous retail, as defined or classified under Major Group 59 of the SIC Manual, latest version, or
- c. hotels, rooming houses, camps and other lodging places, as defined or classified under Major Group 70 of the SIC Manual, latest version;

2. "Estimated direct state sales tax benefits" means the state sales tax revenues projected by the Department of Commerce to accrue to the state as a result of the construction, renovation or expansion of a targeted tourism establishment;

3. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of the construction, renovation or expansion of a targeted tourism establishment;

4. "Estimated net direct state benefits" means the estimated direct state sales tax benefits less the estimated direct state costs; and

5. "Net benefit rate" means the estimated net direct state sales tax benefits computed as a percentage of gross taxable sales; provided, the net benefit rate may be variable and shall not exceed four and one-half percent (4.5%).

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3903 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A targeted tourism establishment which meets the qualifications specified in this act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of this act in an amount which shall be equal to the net benefit rate multiplied by the actual gross taxable sales for a calendar quarter as verified by the Oklahoma Tax Commission. A county or municipality in which a targeted tourism establishment is constructed, renovated or expanded may enact, after a public hearing, a resolution or ordinance to provide incentive payments to targeted tourism establishments not exceeding the rate of sales taxes levied by the county or municipality.

B. In order to receive incentive payments, a targeted tourism establishment 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 to determine if the applicant is qualified. The Department shall determine if the applicant is qualified to receive incentive payments.

C. 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 sales tax benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross taxable sales 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 incentive payments, cumulatively, exceed the estimated net direct state sales tax benefits.

D. 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 targeted tourism establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments. 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 incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this act and within the limitations contained in this act, which existed at the time of such approval.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3904 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 "Historic Route Targeted Tourism Program Incentive Payment Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 1354 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 taxable sales as determined pursuant to the provisions of subsection A of Section 8 of this act. All of the amounts deposited in such fund are hereby appropriated and shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Historic Route Targeted Tourism Incentive Program Act. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3905 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 a targeted tourism establishment has qualified to receive an incentive payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross taxable sales for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross taxable sales 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. In no event shall incentive payments, cumulatively, exceed the estimated net direct state sales tax benefits.

C. An establishment that has qualified pursuant to Section 8 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 incentive payments expands, it may apply for additional incentive payments based on the gross taxable sales anticipated from the expansion only, pursuant to Section 8 of this act.

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

SECTION 11. NONCODIFICATION The provisions of Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 12. This act shall become effective July 1, 1995.

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.

Passed the Senate the 14th day of March, 1995.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1995.

Speaker

of the House of
Representatives