

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 3204

By: Roach, Turner, Smith  
(Dale), Pope (Clay),  
Braddock, Tyler, Covey,  
McCarter and Hutchison of  
the House

and

Fisher and Henry of the  
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economic development; amending 62 O.S. 1991, Sections 690.2, as amended by Section 1, Chapter 183, O.S.L. 1994, 690.3, as amended by Section 2, Chapter 176, O.S.L. 1992, and 690.4, as amended by Section 48, Chapter 275, O.S.L. 1993 (62 O.S. Supp. 1997, Sections 690.2, 690.3 and 690.4), which relate to the Oklahoma Enterprise Zone Act; modifying definitions; modifying criteria for designation of enterprise zones; requiring rules by Oklahoma Department of Commerce for certain designation; modifying provisions governing qualification for benefits and incentives; requiring demonstration by business enterprise; prescribing content of application; requiring Enterprise Zone Application Review Committee; prescribing composition of Committee; requiring evaluation of applications; prescribing procedures for evaluation of applications; prescribing procedures related to award of benefits and incentives; providing for termination of process for evaluation of applications; modifying reference to certain investment tax credit for purposes of benefit computations pursuant to Oklahoma Enterprise Zone Act; modifying references; providing for effect of qualification for benefits prior to certain date; amending 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), which relates to income tax credits for certain investment; modifying references; providing for income tax credit for investment in certain qualified depreciable property; providing for income tax credit for increase in full-time-equivalent employees; prescribing amount of credits; prescribing procedures related to expenditure of certain qualifying amount; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 690.2, as amended by Section 1, Chapter 183, O.S.L. 1994 (62 O.S. Supp. 1997, 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, limited liability company or other legally constituted business entity;

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 has experienced a decrease in population equal to a percentage, as annually determined by the Oklahoma Department of Commerce for purposes of qualifying a county as an enterprise zone, in the calendar year preceding the beginning of the fiscal year for which an application is made pursuant to Section 690.3 of this title. The Oklahoma Department of Commerce shall promulgate rules describing the percentage of population loss which determines eligibility for enterprise zone designations pursuant to this division, or~~

(2) has been determined to rank in the lowest one-third (1/3) of all counties, which for purposes of this division shall be computed as the lowest twenty-five (25) counties, for per capita personal income as measured by the Bureau of Economic Analysis for the Oklahoma region for

the calendar year preceding the beginning of the fiscal year for which an application is made pursuant to Section 690.3 of this title,

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,~~ determines, 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 Section 690.1 et seq. of this title,~~ or. For purposes of this subparagraph, an area within or contiguous to the corporate limits of a city or town may be determined to be an area of economic distress if it consists of one or more census tracts located within a city or town or contiguous to a city or town. The area as defined by this subparagraph must:~~

(1) contain a population of persons equal to or greater than thirty percent (30%) of the total population the household income for whom is equal to or less than the poverty level as measured by the U.S. Census Bureau for the Oklahoma region for the most recent year for which data is available prior to the date an application is made pursuant to Section 690.3 of this title, or

(2) contain a population of persons the per capita gross income for whom is twenty percent (20%) or more below the state per capita income, or

c.—~~an area designated as a federal enterprise zone as provided by Section 690.3 of this title,~~ ~~or~~

d.—~~any city or town located within a county which has been designated an enterprise zone by the Oklahoma~~

~~Department of Commerce pursuant to division (5) of  
subparagraph a of this paragraph;~~

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 2. AMENDATORY 62 O.S. 1991, Section 690.3, as amended by Section 2, Chapter 176, O.S.L. 1992 (62 O.S. Supp. 1997, Section 690.3), is amended to read as follows:

Section 690.3 A. On July 1 of each year, the Oklahoma Department of Commerce shall designate as enterprise zones those counties which meet the criteria set out in subparagraph a of paragraph 5 of Section 690.2 of this title or cities or towns or areas contiguous to cities or towns which meet the criteria set out in subparagraph b of paragraph 5 of Section 690.2 of this title. The list shall also include all areas designated as federal enterprise zones which shall be Priority Enterprise Zones for three (3) years.

B. The Oklahoma Department of Commerce shall, within thirty (30) days following July 1 of each year, submit to the board of county commissioners of each county a list of the counties designated enterprise zones.

~~B. C. Upon application by an enterprise seeking to qualify for the benefits and incentives authorized by the provisions of the Oklahoma Enterprise Zone Act, the Oklahoma Department of Commerce shall may approve as an enterprise zone any area within the corporate limits of any city or town or contiguous to such corporate limits which has been identified as a contiguous area of economic distress, as determined by guidelines which include the fact that a majority of the households within the specified area have a household income of less than eighty percent (80%) of the median household income of this state determined by the latest statistics from the decennial census, or as determined by more recent and equally reliable statistics available to the Oklahoma Department of Commerce for the benefits and incentives as provided by law. In order for an enterprise to qualify for the benefits and incentives available pursuant to the Oklahoma Enterprise Zone Act, the enterprise must demonstrate to the Oklahoma Department of~~

Commerce the following conditions in an application to the Department using a form prescribed by the Department for such purpose:

1. A need for the presence of the enterprise in the area within which the enterprise is located or proposes to locate, including, but not limited to, a need for:

- a. addition to market value of commercial or industrial real property in the enterprise zone,
- b. addition of jobs contributing to sustained and stable employment in the enterprise zone,
- c. a business activity with the likelihood of future expansion, or the ability to attract similar enterprises or enterprises the business purpose of which is compatible with the business purposes of the applicant, and
- d. a business activity compatible with existing social and economic conditions prevailing in the area in or around the enterprise zone as of the application date;

2. Organization of the enterprise, including, but not limited to a business plan, site plan, market study or other indications of an objectively determined basis upon which to locate the enterprise in the enterprise zone identified in the application;

3. Likelihood of business success as determined by the probable ability of the enterprise to maintain the employment level anticipated during relevant periods of time after business operations begin;

4. Local support for the applicant which may be established by:

- a. letters of support from county or municipal officials,
- b. documents evidencing support from residents of the area in which the enterprise proposes to locate,
- c. documents evidencing support from existing or other proposed business entities,

- d. documents evidencing support from local economic development organizations, including, but not limited to, councils of government, community action agencies, or other public authorities,
- e. the existence of tax or other economic incentives offered or proposed to be offered by the county or city or town in which the enterprise proposes to locate, or
- f. such other evidence or demonstration of support for the proposed location of the establishment within the enterprise zone as may be relevant for purposes of making the determination required by this section; and

5. The existing location of the enterprise in an enterprise zone as of the date of the application for benefits and incentives or the proposed location of the enterprise in an enterprise zone, with demonstrated ability to commence business operations in the enterprise zone within one (1) year from the date an application is approved.

D. The Oklahoma Department of Commerce shall ~~have the authority to~~ promulgate rules and regulations concerning application procedures and requirements for an enterprise to qualify for benefits and incentives pursuant to the Oklahoma Enterprise Zone Act in accordance with the Oklahoma Administrative Procedures Act.

E. All applications submitted to the Oklahoma Department of Commerce shall be submitted to and evaluated by an Enterprise Zone Application Review Committee to be composed of three (3) persons who shall be:

1. The Chairman of the Oklahoma Tax Commission, or a designee;

2. The Director of the Oklahoma Department of Commerce, or a designee; and

3. The Chairman of Oklahoma Futures, or a designee.

F. The Enterprise Zone Application Review Committee shall evaluate all applications received by it. The applications shall

be submitted not later than the sixth month of the fiscal year. The Committee shall have the authority to conduct hearings, in accordance with the Oklahoma Administrative Procedures Act, to hear testimony and to evaluate evidence in support of an application.

G. The Enterprise Zone Application Review Committee shall select, within each fiscal year, not more than five total enterprises in each enterprise zone to qualify for the incentives and benefits available pursuant to the Oklahoma Enterprise Zone Act. Applications may be approved for enterprise zones designated pursuant to each of subparagraphs a, b, and c of paragraph 5 of Section 690.2 of this title for each fiscal year beginning July 1, 1999.

H. The Enterprise Zone Application Review Committee shall notify the successful applicant in each category as identified in subsection G of this section by certified mail, return receipt requested, within five (5) working days of its decision. The notification shall also contain a certificate, a copy of which shall be forwarded to the Oklahoma Tax Commission, identifying the enterprise as a successful applicant pursuant to the application and evaluation process as provided by this section.

I. The process for determining enterprises eligible for the benefits and incentives available pursuant to the Oklahoma Enterprise Zone Act shall terminate by operation of law, unless renewed pursuant to action by the Legislature, on July 1, 2001.

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. 1997, Section 690.4), is amended to read as follows:

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

1. Two times the amount of investment tax credits as provided in subsection A of Section 2357.4 of Title 68 of the Oklahoma Statutes. For purposes of this act and for purposes of computing the tax credit amount pursuant to subsection A of Section 2357.4 of Title 68 of the Oklahoma Statutes, if an enterprise selects to claim the credit based upon the qualified cost of depreciable

property, the credit amount shall be two percent (2%) of such qualified cost. If an enterprise selects to claim the credit based upon the number of new full-time-equivalent positions, the credit amount shall be One Thousand Dollars (\$1,000.00) for each new full-time-equivalent employee;

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~~ obtain the benefits and incentives and initiatives set forth in provided by this section ~~provided if~~ the enterprise meets the requirements established ~~in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes~~ by law for the receipt of such benefits.

C. An enterprise located within an enterprise zone before the date on which the enterprise zone is designated may ~~benefit from~~ obtain the benefits and incentives and initiatives set forth in provided by 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.

D. 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.

E. 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~~ July 1, 1993, 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.~~ F. The low interest loans ~~set forth in~~ as authorized by 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.~~ G. The other benefits and incentives ~~and initiatives~~ set forth in this section shall be subject to the limitations as provided ~~in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes~~ by law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 690.20 of Title 62, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall not operate as a limitation upon any benefit conferred upon an enterprise prior to July 1, 1999. An enterprise which has previously qualified for a benefit or incentive pursuant to Section 690.1 et seq. of Title 62 of the Oklahoma Statutes prior to July 1, 1999, or which has expended money or undertaken an obligation or made a location decision in reliance upon the conditions prescribed by Section 690.1 et seq. of Title 62 of the Oklahoma Statutes or other provisions of law related to benefits available based upon location of business activity within an enterprise zone shall continue to be entitled to all such benefits or incentives on and after July 1, 1999.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), is amended to read as follows:

Section 2357.4 A. For taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for ~~investment~~:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing or processing facility or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state; ~~or for a~~

2. A net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. For taxable years beginning after December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property with a total cost equal to or greater than Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure and placed in service in this state during those years for use in the manufacture of products described by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision;  
or

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a

net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section, but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00) ~~and~~. The credit provided for in subsection A or B of this section shall not be allowed if ~~such~~ the applicable investment causes a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A or B of this section is calculated on the basis of ~~one percent (1%) of~~ the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

~~E.~~ F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-

equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

~~D.~~ G. The credit allowed by subsection A of this section shall be the greater amount of either ~~one~~ one:

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

~~E.~~ H. The credit allowed by subsection B of this section shall be the greater amount of either:

1. Two percent (2%) of the cost of the qualified property in the year the property is placed in service; or

2. One Thousand Dollars (\$1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period.

~~F.~~ J. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the ~~credit~~ credits authorized by subsections A and B of this section to both houses of the Oklahoma Legislature. Such report shall summarize the total amount of credits claimed and likely to be claimed and allowed ~~under~~ pursuant to subsections A and B of this section.

SECTION 6. Sections 1 through 4 of this act shall become effective July 1, 1999.

SECTION 7. Section 5 of this act shall become effective January 1, 1999.

46-2-11735          MAH