

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3202

By: Roach

COMMITTEE SUBSTITUTE

An Act relating to enterprise zones; amending 62 O.S. 1991, Sections 690.1, 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 short title; modifying definitions; providing for method to determine enterprise zone status; providing for designations of enterprise zones established prior to effective date of act; modifying procedures for establishment of enterprises eligible for benefits and incentives; requiring demonstration to the Oklahoma Department of Commerce; prescribing conditions; requiring adoption of rules; requiring Enterprise Zone Application Review Committee; prescribing qualifications for membership; prescribing procedure for evaluation of applications; requiring notifications; providing for period of eligibility for benefits pursuant to Oklahoma Enterprise Zone Act of 1998; prescribing procedures for renewals; providing for termination of process for determining eligibility for benefits and incentives; modifying provisions related to investment income tax credit; authorizing increased net benefit rate pursuant to Oklahoma Quality Jobs Program Act under certain circumstances; modifying references; amending 62 O.S. 1991, Section 88.2, which relates to the Oklahoma Small Business Linked Deposit Act; modifying reference; amending Section 3, Chapter 342, O.S.L. 1992 (62 O.S. Supp. 1997, Section 852), which relates to the Local Development Act; modifying reference; prescribing effect of modifications to Oklahoma Enterprise Zone Act upon benefits conferred prior to effective date; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 690.1, is amended to read as follows:

Section 690.1 This act may be cited as the "Oklahoma Enterprise Zone Act of 1998".

SECTION 2. 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 two percent (2%) or greater decrease in population 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. For purposes of this act, a county which has experienced a two percent (2%) or greater decrease in population during calendar year 1997 compared to its 1996 population or an equivalent decrease in its population in fiscal year 1998, compared to fiscal year 1997, shall qualify as an "enterprise zone", or~~

(2) has been determined to rank in the lowest one-third (1/3) of all 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 three (3) or more census tracts located within a city or town or contiguous to a city or town:

- (1) contain a population of persons the household income for whom is equal to or less than the poverty level for one individual as measured by the U.S. Census Bureau 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, 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,

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

d.—any county or any area within or contiguous to the corporate limits of any city or town located within a county which has been designated, or other area pursuant to a designation made prior to the effective date of this act that qualified as an enterprise zone ~~by the Oklahoma Department of Commerce pursuant to division (5) of subparagraph a~~

the provisions of this paragraph prior to July 1, 1998;

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 690.3, 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 or cities or towns or areas contiguous to cities or towns which meet the criteria set out in subparagraph a or 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 of 1998, 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~~ qualifying for the benefits and incentives available. In order for an enterprise to qualify for the benefits and incentives available pursuant to the Oklahoma Enterprise Zone Act of 1998, the enterprise must demonstrate to the Oklahoma Department of Commerce the following conditions:

1. A need for the presence of the enterprise in the area within in 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 of 1998 in accordance with the Oklahoma Administrative Procedures Act.

E. The Oklahoma Department of Commerce shall establish an Enterprise Zone Application Review Committee to be composed of at least three (3), but not more than seven (7) persons who shall be employees of the Oklahoma Department of Commerce. The size of the Committee may vary from fiscal year to fiscal year, but shall not vary in size during a fiscal year. The persons selected to occupy the positions on the Committee shall be qualified based upon experience in business, economics, statistics, demographic analysis, familiarity with the concepts underlying the establishment of enterprise zones and such other criteria as may be established by the Oklahoma Department of Commerce.

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 three (3) total enterprises in each enterprise zone to qualify for the incentives and benefits available pursuant to the Oklahoma Enterprise Zone Act of 1998. 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, 1998, subject to the limits imposed by subsection J of this section.

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 enterprise shall be eligible for all of the benefits and incentives authorized by the Oklahoma Enterprise Zone Act of 1998 for a period of three (3) years, subject to any applicable provisions regarding carry over of tax credits, or subject to financing provisions in validly executed promissory notes, mortgages, instruments establishing a security interest or other instruments documenting the obligations of the enterprise. Upon application submitted by the enterprise to the Enterprise Zone Application Review Committee, the enterprise may be permitted to renew the benefits and incentives for additional periods as authorized by the Committee. A renewal pursuant to this subsection shall not be counted as one of the total permissible approvals for the fiscal year during which the application for renewal is submitted and the Committee shall independently evaluate other applications for an award pursuant to subsections E through H of this section.

J. The process for determining enterprises eligible for the benefits and incentives available pursuant to the Oklahoma Enterprise Zone Act of 1998 shall terminate by operation of law, unless renewed pursuant to action by the Legislature, on July 1, 2001. The provisions of this subsection shall not prevent an enterprise which has previously been awarded a certificate pursuant to this section from applying for a renewal on or after July 1, 2001, notwithstanding the provisions of this subsection.

SECTION 4. 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~~ Three (3) times the amount of investment tax credits as provided in 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 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 three percent (3%) 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 Five Hundred Dollars (\$1,500.00) 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~~ A net benefit rate not to exceed seven percent (7%) of the estimated gross payroll pursuant to the provisions of the Oklahoma Quality Jobs Program Act, or the Saving Quality Jobs Act or the Former Military Facility Development Act; 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~~ 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 provided in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes as provided by law.~~

SECTION 5. AMENDATORY 62 O.S. 1991, Section 88.2, is amended to read as follows:

Section 88.2 As used in the Oklahoma Small Business Linked Deposit Act:

1. "Eligible participant" means:

- a. any small business organized for profit, including any business related to tourism, doing business in and from the State of Oklahoma, which employs not more than two hundred (200) employees or has gross annual receipts of not more than Four Million Dollars (\$4,000,000.00),
- b. any industrial park that has been certified by the Oklahoma Department of Commerce as meeting minimum guidelines necessary for an industrial park, and
- c. any public trust authorized in accordance with Section 176 of Title 60 of the Oklahoma Statutes engaged in industrial development as determined by the Department of Commerce. Such public trusts are limited to fifteen percent (15%) of the total available funds and a nonrenewable term not to exceed six (6) months unless their purpose is to make package passthrough loans to other private nontrust recipients for industrial development purposes in which case the other conditions contained in this act shall apply. Subsequent loans made by an eligible trust cannot exceed the interest rate established by this act.

2. "Eligible lending institution" means a financial institution that:

- a. is eligible to make commercial loans,
- b. is a public depository of state funds, and
- c. agrees to participate in the linked deposit program,
or
- d. is an institution of the farm credit system
organized under the federal "Farm Credit Act of
1971", 12 U.S.C. 2001, as amended.

3. "Enterprise zone" means those areas designated as enterprise zones or districts in accordance with the Oklahoma Enterprise Zone Act of 1998, Sections 690.1 through 690.19 of this title.

4. "Priority Enterprise Zones" means an enterprise zone selected by the Department of Commerce which has demonstrated unusual commitment as provided by this act.

5. "Small business linked deposit" means a certificate of deposit placed by the State Treasurer with an eligible lending institution.

6. "Board" means the Oklahoma Linked Deposit Review Board.

SECTION 6. AMENDATORY Section 3, Chapter 342, O.S.L. 1992 (62 O.S. Supp. 1997, Section 852), is amended to read as follows:

Section 852. It is the intent of the Legislature that the provisions of this act be used in accordance with the following guidelines:

1. That the tools of this act be used in those cases where investment, development and economic growth is difficult, but is possible if the provisions of this act are available;

2. That the tools of this act not be used in areas where investment, development and economic growth would have occurred anyway and that the governing body take care to exclude areas that do not meet this criteria;

3. That the tools of this act be used to supplement and not supplant or replace normal public functions and services;

4. That the tools of this act work in conjunction with existing programs and efforts such as the Oklahoma Main Street Program, Oklahoma Enterprise Zone Act of 1998, historic

preservation and other locally implemented economic development efforts;

5. That any proposed districts be delineated with particular emphasis not to have boundaries that dissect a similar area or create unfair competitive advantage;

6. That the governing body recognizes the need for residential and neighborhood treatment as well as commercial/industrial development;

7. That where possible partial credits or credits that do not utilize the full time frame allowed be pursued;

8. That maximum effort be made to allow full public knowledge and participation in the local use of this act;

9. That conservation, preservation and rehabilitation be emphasized while demolition, clearance and relocation be minimized where possible; and

10. That the governing bodies develop and apply clear standards, criteria and threshold limits that are applicable to all similar property and areas and that the governing bodies enact protection against nearby relocations to utilize incentives.

SECTION 7. 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 the Oklahoma Enterprise Zone Act of 1998 shall not operate as a limitation upon any benefit conferred upon an enterprise prior to July 1, 1998.

SECTION 8. This act shall become effective July 1, 1998.

SECTION 9. 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.