

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2245

By: Benson

COMMITTEE SUBSTITUTE

An Act relating to economic development; enacting the Oklahoma Major Employers Modernization Act; making legislative findings; stating purposes; requiring implementation of act; providing for statutory construction; defining terms; authorizing certain incentive; providing for transferability of certain tax credits; prescribing terms of transferability; stating total amount of credits transferable; imposing procedures regarding transfer; requiring certain investment; providing for amount of tax credit; providing for certificates; providing for redemption and carryover; prescribing procedures for use of credits; authorizing rules; prescribing criminal penalty for certain conduct; 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 4101 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Oklahoma Major Employers Modernization Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4102 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Legislature hereby finds and declares that the health, safety and general welfare of the people of this state are directly dependent upon the state economy. One of the principal problems of our present economy is the threat of permanent closing of industrial, manufacturing and certain nonretail service firms and their headquarters or their relocation out of state. Such closing

may result in the loss of quality jobs and investment within the state.

B. It is the purpose of this act to encourage the retention and expansion of qualified establishments as defined in this act by contracting with certain firms to secure the continued location, expansion and modernization of major employers within Oklahoma.

C. The Oklahoma Department of Commerce and the Oklahoma Tax Commission shall implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act are hereby deemed and held to be essential public purposes.

D. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, establishment or agency nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, establishment or agency.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4103 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Major Employers Modernization Act:

1. "Certificates of credits" means certificates issued by the Oklahoma Tax Commission to a qualified establishment. The Tax Commission shall issue certificates for the credits as soon as investment in qualified facilities has been reported and verified by the qualified establishment. Upon issuance, any certificate shall be evidence that a qualified establishment or a transferee of the original qualified establishment submitting the certificate or a certified copy thereof, with the relevant tax return or other form, has the legal right to exercise the credits in order to reduce the relevant tax liability for the amount and period authorized by the certificate;

2. "Establishment" means a business or an agency of the federal government that:

- a. has at least One Hundred Fifty Million Dollars (\$150,000,000.00) in existing annual gross compensation paid to jobs located in Oklahoma according to Oklahoma Employment Security records for the previous three (3) years,
- b. has an average salary of at least Forty Thousand Dollars (\$40,000.00) paid to existing employees,
- c. intends to add substantial gross compensation, as defined below, located in Oklahoma within three (3) years of contracting with the Oklahoma Department of Commerce pursuant to this act and the Oklahoma Quality Jobs Program Act, Section 3601 et seq. of Title 68 of the Oklahoma Statutes,
- d. has at least Two Hundred Million Dollars (\$200,000,000.00) total investment in Oklahoma,
- e. intends to add investment for modernization and retooling of at least One Hundred Million Dollars (\$100,000,000.00) within five (5) years of contracting with the Oklahoma Department of Commerce or Two Hundred Fifty Million Dollars (\$250,000,000.00) during the term of the contract, whichever is later,
- f. has and maintains at least two thousand (2,000) full-time employees, and
- g. is a qualified industry as defined in Section 2357.4 of Title 68 of the Oklahoma Statutes;

3. "Gross compensation" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes and benefits paid on behalf of employees receiving wages;

4. "Substantial gross compensation" means annualized compensation of Four Million Dollars (\$4,000,000.00) or more within

three (3) years of contracting with the Oklahoma Department of Commerce under the terms of this act and the Oklahoma Quality Jobs Program Act; and

5. "Tax credits" means tax credits that are earned for investments for facilities as defined in Section 2357.4 of Title 68 of the Oklahoma Statutes; provided, such tax credits may be used to reduce liability imposed not only pursuant to Section 2355 of Title 68 of the Oklahoma Statutes but also any liability incurred pursuant to Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credits may be used in payment of estimated tax payments imposed by Sections 624 and 628 of Title 36 of the Oklahoma Statutes. The credits shall be in an amount as set out in Section 5 of this act. Provided, tax credits for purposes of this act include any credits that have been earned and are outstanding for investment in facilities in accordance with Section 2357.4 of Title 68 of the Oklahoma Statutes and all credits that will be earned prior to 2011.

Unless otherwise stated in this act, the definitions of the Oklahoma Quality Jobs Program Act, Section 3601 et seq. of Title 68 of the Oklahoma Statutes, shall apply.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4104 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which is qualified for incentive payments pursuant to this act and applicable parts of the Oklahoma Quality Jobs Program Act shall be entitled to utilize an additional incentive pursuant to the terms of this act. The establishment shall be entitled to transfer earned and outstanding income tax credits earned under the terms of Section 2357.4 of Title 68 of the Oklahoma Statutes except as otherwise provided herein and any income tax credits earned prospectively within ten (10) years of the date upon which the establishment contracts with the Oklahoma Department of Commerce pursuant to the Oklahoma Quality Jobs Program Act,

earned pursuant to the terms of Section 2357.4 of Title 68 of the Oklahoma Statutes, for investment in new facilities notwithstanding any provisions of Section 3607 of Title 68 of the Oklahoma Statutes.

B. The credits shall be freely transferable to and by subsequent transferees; provided, no such tax credits shall be transferable prior to July 1, 2003, nor after July 1, 2011. Such transferable credits may not exceed Thirty-eight Million Dollars (\$38,000,000.00) face value.

C. No more than:

1. Seven Million Dollars (\$7,000,000.00) face value of tax credits may be utilized or transferred after July 1, 2002;

2. Seven Million Dollars (\$7,000,000.00) face value of tax credits may be utilized or transferred after July 1, 2003; and

3. Twenty-four Million Dollars (\$24,000,000.00) face value of tax credits may be utilized or transferred after July 1, 2004.

Credits may be carried forward for ten (10) years after the initial year earned.

D. Provided further, the credits may not be utilized by the establishment or any transferees or subsequent transferees until the establishment has spent at least Fifty Million Dollars (\$50,000,000.00) in a modernization and retooling project.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4105 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The amount of the tax credit allowed pursuant to the provisions of Section 4 of this act shall be ten percent (10%) of qualified investment and shall be deemed fully earned as of the recognition of investment by the Tax Commission for investment in qualified facilities. This section shall also apply to any tax credits that are unused and carried forward as of the date of the recognition of investment by the Tax Commission for investment in qualified facilities. The ten percent (10%) credit authorized by

this section shall also apply to any tax credits earned by a qualified establishment as a result of investment in qualified facilities in the state beginning on January 1, 1997. The Tax Commission shall issue credit certificates of credits as soon as recognition of investment, which shall be fully redeemable notwithstanding any provisions of Section 2357.4 of Title 68 of the Oklahoma Statutes, and transferable immediately. The credits may be carried forward in accordance with Section 2357.4 of Title 68 of the Oklahoma Statutes.

B. The Oklahoma Tax Commission shall develop a system for registration of any tax credits issued or transferred pursuant to this act and a system of certificates that permits verification that any tax credit claimed upon a tax return is validly issued, properly taken in the year of the claim and that any transfer of tax credits authorized by this act may be made. The system of verification shall assure that any request, whether written or made by electronic or other means, shall receive an official response as to the validity and proper usage of the certificate within sixty (60) days.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4106 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce and the Oklahoma Tax Commission may promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4107 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement, invoice, or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report,

return, statement, invoice, or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids and abets another in providing such false or fraudulent information, upon conviction, shall be guilty of a felony. The fine for violation of this section shall be not less than One Thousand Dollars (\$1,000.00) nor more than Fifty Thousand Dollars (\$50,000.00). Any person convicted of a violation of this section shall be liable for the repayment of all payments made or liabilities avoided by the fraudulent behavior. Interest shall be due on such repayments at the rate of ten percent (10%) per annum.

SECTION 8. 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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