

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 55

By: Capps and Kerr of the
Senate

and

Covey, Deutschendorf and
Braddock of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation and state government; providing credit against certain taxes; providing for transferability thereof; defining terms; specifying qualifications for qualified space transportation vehicle providers for investments therein to qualify for tax credit; disallowing or allowing for recapture of tax credit under certain conditions; specifying duties of Oklahoma Tax Commission; specifying maximum amount of credit and for priority of claims therefor; specifying percentage of investment that may be claimed as credit; providing for development and issuance of forms and instructions; requiring certain qualified space transportation vehicle providers to maintain record of investments and make certain notification to Tax Commission; providing that incentive payments under Oklahoma Quality Jobs Program Act or Former Military Facility Development Act not be received by certain establishments for certain time period; providing for distribution of such payments; providing for payment of amount of incentive payment in excess of amount of tax credit; providing for apportionment of certain funds; providing that certain qualified space transportation vehicle providers not be entitled to certain incentive payments; allowing qualified space transportation vehicle provider to make certain election and requiring notification to Tax Commission; prohibiting certification of certain establishments for determining eligibility for tax credit; amending Section 1, Chapter 203, O.S.L. 1999 (68 O.S. Supp. 2000, Section 2357.13), which relates to credits for commercial space industries; providing that certain credit not be allowed for certain projects; amending Section 14, Chapter 343, O.S.L. 1995, as amended by Section 1, Chapter 101, O.S.L. 1999, Section 7, Chapter 164, O.S.L. 1999, as amended by Section 2, Chapter 145, O.S.L. 2000 (74 O.S. Supp. 2000, Sections 4257 and 5207), which relate to boards and commissions and the Oklahoma Space Industry Development Authority; providing exception; allowing appointment of certain person as chief executive officer of Authority; requiring resignation and

providing for filling of vacancy; 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 2357.42 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning after December 31, 2000, and ending before January 1, 2007, there shall be allowed to an investor making an eligible investment a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit may be used in the payment of estimated tax payments for the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit shall be in the amount as set forth in subsection G of this section.

B. The amount of the credit shall be transferable to subsequent transferees. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period.

C. As used in this section:

1. "Eligible investment" means an investment made during a period not earlier than January 1, 2001, and not later than December 31, 2002, in a qualified space transportation vehicle provider that:
 - a. is headquartered in this state or is ultimately controlled by an entity headquartered in this state,

b. has been certified by the Oklahoma Tax Commission as meeting the following minimum qualifications:

- (1) is included within the definition of "basic industry" as set forth in division (1) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes and has been preapproved by the Oklahoma Department of Commerce to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act. The Department shall establish a process for preapproval of applicants for the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act for purposes of this division. The qualified space transportation vehicle provider shall agree to submit such information as may be required under this section and the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act to allow the Tax Commission to determine the amount of the tax credit allowed pursuant to the provisions of this section and the amount of incentive payments allowed pursuant to the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act for purposes of subsection K of this section,
- (2) has equity capitalization of not less than Ten Million Dollars (\$10,000,000.00), and
- (3) has received a commitment by a local governmental entity, whether by contract, letter agreement, terms sheet, resolution, ordinance or indenture, to provide funds, personal property or real

property in the aggregate amount of Fifteen Million Dollars (\$15,000,000.00) or more which will be utilized by one or more qualified space transportation vehicle providers. For purposes of this division, such property may include personal or real property owned by a local governmental entity which has been leased to a state authority pursuant to a long-term lease. A tax credit shall not be allowed to an investor making an eligible investment in a qualified space transportation vehicle provider or shall be subject to recapture if previously allowed if the qualified space transportation vehicle provider in which the investment was made fails to make use of such funds or property within three (3) years of the date the tax credit was allowed;

2. "Qualified space transportation vehicle provider" means any commercial provider organized under the laws of this state as a corporation or a limited liability company and engaged in designing, developing, producing, or operating commercial space transportation vehicles in this state; and

3. "Space transportation vehicle" includes all types of vehicles or orbital or suborbital spacecraft, whether now in existence, developed in the future, or currently under design, development, construction, reconstruction, or reconditioning, constructed in this state and owned by a qualified space transportation vehicle provider, for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle or spacecraft not specifically designed or adapted for a payload.

D. The tax credit provided for in this section shall not be allowed or, if already claimed, shall be subject to recapture with

respect to any amount of an eligible investment made which is subsequently refunded or returned to the investor.

E. The Tax Commission shall:

1. Certify, upon request of an authorized agent or representative of a qualified space transportation vehicle provider, that the qualified space transportation vehicle provider for which the certification is sought meets the qualifications prescribed by subparagraph b of paragraph 1 of subsection C of this section. The certification shall be in writing and signed by an authorized representative of the Tax Commission and, for purposes of determining qualifications of a qualified space transportation vehicle provider in which an investment may be eligible for the credit authorized by this section, shall be binding upon the Tax Commission; and

2. Issue a certificate to an investor that provides adequate documentation of qualification for the credit authorized by this section even if the credit may not be claimed until after the date upon which the certificate is requested. Upon issuance, the certificate shall be evidence that an investor or a transferee of the original tax credit claimant submitting the certificate, or a certified copy thereof, with the relevant tax return or other form, has the legal right to exercise the credit in order to reduce the relevant tax liability for the period authorized by this section.

F. The maximum amount of all eligible investments for which tax credits may be claimed under this section shall be Thirty Million Dollars (\$30,000,000.00). If more than one qualified space transportation vehicle provider has been certified by the Tax Commission pursuant to the provisions of subsection E of this section, the investors in the first such approved qualified space transportation vehicle provider shall be entitled to a credit based on their investment of the lesser of their eligible investment or Thirty Million Dollars (\$30,000,000.00). The investors in the

second such approved qualified space transportation vehicle provider shall then be entitled to a credit based on their investment of the lesser of their eligible investment or the difference between the total eligible investments in previously approved qualified space transportation vehicle providers and Thirty Million Dollars (\$30,000,000.00). This same procedure will apply for all subsequently approved qualified space transportation vehicle providers. If the amount of eligible investments exceeds the amount upon which the tax credit may be claimed as provided herein, investors shall be allowed a share of the amount of the available tax credit in order of the dates of receipt of certification therefor by the Tax Commission pursuant to the provisions of paragraph 1 of subsection E of this section.

G. The amount of the tax credit allowed pursuant to the provisions of subsection A of this section shall be deemed fully earned as of the date of the investment and shall be fully redeemable as follows:

Period for Which

Tax Liability Determined

Credit Allowed

Tax year subsequent to year of eligible investment	10.6% of eligible investment
Second tax year subsequent to year of eligible investment	11.236% of eligible investment
Third tax year subsequent to year of eligible investment	11.910% of eligible investment
Fourth tax year subsequent to year of eligible investment	12.624% of eligible investment
Fifth tax year subsequent to	

year of eligible investment

13.381% of eligible
investment

H. The Tax Commission shall develop and issue appropriate forms and instructions to enable investors to claim the tax credit provided for in this section.

I. A qualified space transportation vehicle provider in which an eligible investment qualifies for a credit authorized by this section shall maintain a record of investment made in the qualified space transportation vehicle provider for the period beginning January 1, 2001, and ending December 31, 2002. The qualified space transportation vehicle provider shall notify the Tax Commission not later than January 31, 2003, of the total investment amount for such period. Any such qualified space transportation vehicle provider which refunds or returns any amount of an eligible investment to the investor shall notify the Tax Commission in writing of the amount and recipient of such refunds or returns. The Tax Commission shall compute the maximum amount of credits available pursuant to this section based upon notification of the investment amount transmitted to the Tax Commission by the qualified space transportation vehicle provider.

J. A qualified space transportation vehicle provider in which eligible investments qualify for the tax credit authorized by this section shall not receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act until the total of such incentive payments the qualified space transportation vehicle provider would otherwise receive exceeds the total amount of the credit authorized by this section as computed by the Tax Commission pursuant to subsection I of this section. The amount of incentive payments for any year which would otherwise be paid to the qualified space transportation vehicle provider shall be distributed as follows:

1. If the amount of such incentive payments equals or exceeds the amount of the tax credit for the year, the amount of such payments which is equal to the amount of the tax credit shall be apportioned as if collected from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 or 628 of Title 36 of the Oklahoma Statutes according to the tax against which the credit was claimed. The amount of such payments which is in excess of the amount of the tax credit shall be retained by the Tax Commission to be paid as provided for in this paragraph for subsequent years for which the tax credit is allowed to the qualified space transportation vehicle provider;

2. If the amount of such incentive payments and any amount retained by the Tax Commission pursuant to the provisions of paragraph 1 of this subsection is less than the amount of the tax credit for the year, notwithstanding the provisions of Section 1727 of Title 69 of the Oklahoma Statutes, the Tax Commission shall withhold a portion of the taxes levied and collected pursuant to the provisions of paragraph 1 of subsection A of Section 500.4 of Title 68 of the Oklahoma Statutes which would otherwise be paid to the Department of Transportation by the Oklahoma Transportation Authority pursuant to the provisions of paragraph (2) of subsection (d) of Section 1730 of Title 69 of the Oklahoma Statutes equal to the amount of the deficit.

The Tax Commission shall apportion all funds collected pursuant to the provisions of this paragraph as if collected from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 or 628 of Title 36 of the Oklahoma Statutes according to the tax against which the credit was claimed; and

3. If any amount is withheld by or paid to the Tax Commission pursuant to the provisions of paragraph 2 of this subsection, the amount of incentive payments to be subsequently paid to the qualified space transportation vehicle provider shall be apportioned

by the Tax Commission to the Department of Transportation until such time as all amounts paid pursuant to the provisions of paragraph 2 of this subsection are repaid.

K. A qualified space transportation vehicle provider in which investments qualify for the credit allowed by this section shall not be entitled to payment of any incentive payments accrued prior to January 1, 2001, under the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act.

L. Notwithstanding the provisions of this section, a qualified space transportation vehicle provider may, prior to the issuance of a tax credit with respect to the qualified space transportation vehicle provider pursuant to the provisions of this section, elect to receive incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act in lieu of allowing the tax credit provided for herein, in which case it shall so notify the Tax Commission in writing and the provisions of this section shall not be applicable.

M. Except as provided by subsection L of this section, no qualified space transportation vehicle provider which would otherwise qualify for incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act may receive such incentive payments prior to January 1, 2003.

N. No qualified space transportation vehicle provider which has made application to the Oklahoma Department of Commerce or which has executed any agreement with the Oklahoma Department of Commerce with respect to the receipt of incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act or which has received any incentive payment pursuant to the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act prior to the

effective date of this act, may be certified for purposes of determining eligibility for the credit authorized by this section.

SECTION 2. AMENDATORY Section 1, Chapter 203, O.S.L. 1999 (68 O.S. Supp. 2000, Section 2357.13), is amended to read as follows:

Section 2357.13 A. For taxable years beginning after December 31, 1999, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title for investments in qualifying projects, the purpose of which is to encourage the development of commercial space industries in this state.

B. As used in this section:

1. "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed;

2. "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations;

3. "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

- a. costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen,
- b. costs of acquiring land or rights to land and any cost incidental thereto,

- c. costs of architectural and engineering services, including, but not limited to, test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project, and
- d. costs associated with the installation of fixtures and equipment, surveys, site tests and inspections, subsurface site work and excavation, removal of structures, roadways, and other surface obstructions, filling, grading, paving, and providing for drainage, storm water retention, and installation of utilities, and offsite construction of utility extensions to the boundaries of the property.

"Eligible capital costs" shall not include the cost of any property previously owned or leased by the qualifying business;

4. "Jobs" means full-time-equivalent positions, as such term is consistent with terms used by Oklahoma Employment Security Commission and the United States Department of Labor for purposes of unemployment tax administration and employment estimation, resulting directly from a project in this state. Such term does not include temporary construction jobs involved in the construction of the project facility;

5. "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the Oklahoma Tax Commission to receive tax credits pursuant to the provisions of this section; and

6. "Qualifying project" means a new or expanding facility in this state or a combination of two new or expanding facilities in this state which facility or combination of facilities creates at

least one hundred (100) new jobs in this state and is engaged in an industry which the Oklahoma Space Industry Development Authority is authorized to promote.

C. The credit provided for in this section shall be in the amount of five percent (5%) of the eligible capital costs generated by a qualifying project. In order to qualify to receive the credit, application shall be made to the Tax Commission, which shall certify the amount of eligible capital costs generated by a qualifying project and the maximum amount of the tax credit to which the taxpayer will be entitled. The credit shall be granted only against the tax liability upon income generated by or arising out of the qualifying project and shall not exceed the following percentages of the corporate income tax liability upon income generated by or arising out of a qualifying project for any tax year in which a credit may be claimed:

1. One hundred percent (100%) for a qualifying project which results in a cumulative capital investment of more than One Hundred Million Dollars (\$100,000,000.00);

2. Seventy-five percent (75%) for a qualifying project which results in a cumulative capital investment of more than Fifty Million Dollars (\$50,000,000.00), but not exceeding One Hundred Million Dollars (\$100,000,000.00); and

3. Fifty percent (50%) for a qualifying project which results in a cumulative capital investment of Twenty-five Million Dollars (\$25,000,000.00) or more, but not exceeding Fifty Million Dollars (\$50,000,000.00).

A qualifying project which results in a cumulative capital investment of less than Twenty-five Million Dollars (\$25,000,000.00) shall not be eligible for the credit. No credit may be claimed for investments made prior to July 1, 1999.

The amount of any credit allowed but not used in any tax year may be carried over in order to each of the four (4) years following

the year of qualification subject to the limitations provided in this subsection. In no event shall any credit granted pursuant to the provisions of this section be transferable or refundable.

D. The credit allowed pursuant to the provisions of this section shall not be allowed for any project undertaken by a qualified space transportation vehicle provider in which a credit for an eligible investment is claimed pursuant to the provisions of Section 1 of this act.

SECTION 3. AMENDATORY Section 14, Chapter 343, O.S.L. 1995, as amended by Section 1, Chapter 101, O.S.L. 1999 (74 O.S. Supp. 2000, Section 4257), is amended to read as follows:

Section 4257. A. Except as otherwise provided for by ~~this section~~ law, no state board or commission shall employ any former member of the board or commission.

B. A state board or commission may employ a former member of the board or commission if at least one (1) year has passed since the term of office of the former member has expired.

C. Notwithstanding subsection B of this section, a state board or commission may employ a state employee who is an ex officio member of that board or commission and who is required by law to be a member of that board or commission. This subsection shall not apply to a statewide elected official who is an ex officio member of a board or commission.

D. Any person who willfully violates any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for not longer than six (6) months or by both such fine and imprisonment, and upon conviction shall be ineligible for appointment to or employment in a position in state service and, if at the time of conviction is an employee of the state, shall forfeit his or her position.

SECTION 4. AMENDATORY Section 7, Chapter 164, O.S.L. 1999, as amended by Section 2, Chapter 145, O.S.L. 2000 (74 O.S. Supp. 2000, Section 5207), is amended to read as follows:

Section 5207. A. Subject to the provisions of Section 5206 of this title, there is created within the Oklahoma Space Industry Development Authority, the Board of Directors consisting of seven (7) members who shall be appointed by the Governor with advice and consent of the Senate. All but one Board member shall be a resident of this state. Each member appointed to serve on the Board shall have experience in the aerospace or commercial space industry or finance, or have other significant relevant experience.

B. 1. Initially, the Governor shall appoint four members for terms of three (3) years and three members for terms of four (4) years. Thereafter, each member shall serve a term of four (4) years or until a successor is appointed and qualified. Initial appointments shall be made no later than sixty (60) days after the motion to activate the Authority is memorialized pursuant to Section 5206 of this title. The term of the members shall commence on the date of appointment and terminate on June 30 of the year of the end of the term. No member shall serve on the Board for more than two full four-year terms. Except as prohibited by the Oklahoma Constitution, appointment to the Board shall not preclude any member from holding any other private or public position.

2. An appointment to fill a vacancy in a member's office shall be made by the Governor for the unexpired portion of the term of the member who vacated that office.

C. The Governor has the authority to remove from the Board any member in the manner and for cause as defined by the laws of this state and applicable to situations which may arise before the Board. Unless excused by the chair of the Board, a member's absence from two or more consecutive Board meetings creates a vacancy in the office to which the member was appointed.

D. The Governor shall designate a member to serve as chair of the Board who, if such person remains a member of the Board, shall serve as chair until the expiration of the three-year terms of those members of the Board appointed initially for three-year terms. Each subsequent chair shall be selected by the Board members and shall serve a two-year term.

E. 1. The Board shall hold its initial meeting no later than twenty (20) days after the members have been appointed. Meetings shall be held quarterly or more frequently at the call of the chair. A majority of the members on the Board shall constitute a quorum, and a majority vote of the members present is necessary for any action taken by the Board.

2. At its initial meeting, or as soon thereafter as is practicable, the Board shall appoint a chief executive officer who shall serve at the pleasure of the Board. A member of the Board may be appointed as chief executive officer; provided, if a member of the Board is so appointed, the member shall resign as a member of the Board and the vacancy shall be filled as provided in paragraph 2 of subsection B of this section. The Board shall determine the annual salary of the chief executive officer.

F. Each member shall be reimbursed for expenses incurred in the performance of duties on behalf of the Authority as provided for in the State Travel Reimbursement Act.

G. Before the issuance of any revenue bonds under the provisions of ~~this act~~ the Oklahoma Space Industry Development Act, each member of the Board shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars (\$25,000.00). Each such surety bond shall be conditioned upon the faithful performance of the duties of the member's office, shall be executed by a surety company authorized to transact business in the State of Oklahoma as surety, and shall be filed in the office of the Secretary of State.

SECTION 5. 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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