

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2373

By: McCarter, Balkman, Nance,
Nations, Adkins, Blackburn,
Blackwell, Deutschendorf,
Easley, Hefner, Lindley and
Wells of the House

and

Leftwich (Debbe), Maddox
and Wilcoxson of the Senate

An Act relating to economic development; enacting the Oklahoma Quality Investment Act; stating legislative intent; defining terms; * * * * specifying period for certain payments; stating method for computation of payments; authorizing certain analyses by or on behalf of Oklahoma Department of Commerce; * * * * limiting liability based upon certain fund balance; prescribing procedures related to claims for investment payments; providing for reduction of payment amount based upon certain investment activity; * * * * imposing restriction related to additional incentive payments; providing for issuance of warrants; * * * * modifying authority for sessions based upon efforts related to business location; authorizing executive sessions for the Quality Investment Committee; providing for codification; providing an effective date; and declaring an emergency.

AUTHOR: Add the following Senate Coauthor: Gumm

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[economic development - Oklahoma Quality Investment
Act - codification - effective date -
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:

This act shall be known and may be cited as the "Oklahoma Quality Investment 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:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to support retention of manufacturing establishments:
 - a. that are imminently at risk to cease operations in this state,
 - b. that provide long-term benefits through retention of quality jobs which increase the wealth of the state, and
 - c. that agree to engage in significant modernization and retooling that will promote the growth of the industry in Oklahoma and, by doing so, help enlarge the tax base and stabilize the economy of the State of Oklahoma when there is a direct threat to the existing revenue base and wealth of the state because existing establishments are at risk of being lost to other states or nations;
2. The amount of incentives provided pursuant to this act in connection with a particular establishment be directly related to benefits due to retention of jobs and the investment of additional capital for modernizing and retooling as reflected by economic impact, historical contributions trends and tax revenue projections analyses;
3. The Quality Investment Committee created by this act, the Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this

act shall be deemed and held to be the performance of essential public purposes; and

4. Nothing herein be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association. Nor does this act authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association. Nothing herein shall be construed to constitute a gift by the State of Oklahoma to any individual, company, corporation or association.

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:

For purposes of the Oklahoma Quality Investment Act:

1. "Capital costs" means costs for land, buildings, improvements to buildings, fixtures and for machinery, equipment and other personal property used in and for the manufacturing process incurred by an establishment, on or after the effective date of this act, with respect to the manufacturing site located in this state and specified in a quality investment agreement;

2. "Department" means the Oklahoma Department of Commerce;

3. "Economic impact analysis" means an analysis to identify the value in terms of sales tax and income tax revenues accruing to the state and to the local community in which the establishment is located directly due to the retention, expansion or modernization of the establishment;

4. "Establishment" means a business entity primarily engaged in manufacturing. An establishment shall enter into a quality investment agreement pertaining to a single manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of an establishment or any related entities of an establishment shall be included within

this definition. An establishment may enter into additional quality investment agreements for additional sites;

5. "Fiscal year" means the state fiscal year, which shall begin on July 1 of a calendar year and end on June 30 of the next calendar year;

6. "Historical contributions trends analysis" means an analysis of historical contributions to the state and local community of an establishment through jobs and tax base growth. Such an analysis shall include consideration of contributions attributable to the establishment, including those of the establishment's in-state supplies;

7. "Local community" means the town or city and the county of the location of the establishment; provided, a city or town and a county may jointly constitute the local community;

8. "NAICS Manual" means any manual book or other publication containing the North American Industry Classification System, United States, 1997, or as updated or amended from time to time, promulgated by the Office of Management and Budget of the United States of America;

9. "Quality investment agreement" means an agreement with duration of not more than five (5) years entered into between an establishment and the Department, which may be in conjunction with an agreement with the local community in which the establishment is located;

10. "Quality Investment Committee" or "Committee" means a committee, which is hereby created, consisting of the following members:

- a. the Director of the Oklahoma Department of Commerce,
- b. the Dean of Engineering of Oklahoma State University,
- c. the Director of the Oklahoma Alliance for
Manufacturing Excellence,

- d. the Dean of the Price Business College of the University of Oklahoma,
- e. the President of the Oklahoma Center for the Advancement of Science and Technology,
- f. one business representative from the Oklahoma Science and Technology Research and Development Board of the Oklahoma Center for the Advancement of Science and Technology, and
- g. the Director of the State Board of Career and Technology Education.

The Committee shall be staffed by the Oklahoma Department of Commerce;

11. "Start date" means the date on which an establishment begins accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement with the Oklahoma Department of Commerce; and

12. "Tax revenues projections analysis" means an analysis of taxes generated by an establishment in the local community and in the state over the previous ten (10) years in order to determine the projected growth or loss in such revenues to the local community and the state over the following ten (10) years if the establishment does not receive payments pursuant to the provisions of this act and if the establishment does receive payments pursuant to the provisions of this act.

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 has been approved to receive payments pursuant to the provisions of this act shall be eligible to enter into a quality investment agreement with the Oklahoma Department of Commerce for a period not to exceed five (5) years. Under such an agreement, the establishment shall agree to abide by the terms of

the agreement in accordance with the provisions of this act, including investing capital costs in this state in a specified amount each year during the term of the agreement. In exchange, the state shall agree to make an annual payment in an amount determined by the Quality Investment Committee, which shall not exceed ten percent (10%) of the amount of capital costs invested by the establishment in this state during the preceding fiscal year. The maximum amount which may be paid to all approved establishments in any fiscal year shall not exceed Ten Million Dollars (\$10,000,000.00).

B. An establishment may enter into a quality investment agreement with the Department according to the following procedures:

1. The establishment shall make an initial application to the Department on a form prescribed by the Department containing such information as may be required by the Department, the Quality Investment Committee and the Tax Commission;

2. The Department shall determine if the establishment meets the following requirements:

- a. the establishment is engaged in manufacturing described under Sector Nos. 31 through 33 of the North American Industrial Classification System (NAICS) Manual, latest version, at a specified site in this state,
- b. the establishment has been located and doing business in this state for a continuous period of time of not less than ten (10) years prior to the date of the application,
- c. the establishment offers, or will offer within twelve (12) months of entering into a quality investment agreement, a basic health benefits plan as described in subparagraph b of paragraph 1 of subsection A of

Section 3603 of Title 68 of the Oklahoma Statutes to its employees in this state,

- d. the establishment will incur, with respect to the manufacturing site which is the subject of the agreement, capital costs projected to equal or exceed Ten Million Dollars (\$10,000,000.00) within the period of the quality investment agreement, and capital costs projected to equal or exceed One Million Dollars (\$1,000,000.00) during the first year of the agreement,
- e. the establishment will maintain Oklahoma taxable payroll during the period of the quality investment agreement and for at least four (4) years following expiration of the agreement in an amount not less than seventy percent (70%) of the establishment's Oklahoma taxable payroll as of the start date, and
- f. the establishment will pay its employees in this state an average annualized wage which equals or exceeds the thresholds set forth in subsection F of Section 3604 of Title 68 of the Oklahoma Statutes.

The determination shall be made upon application of the establishment and annually thereafter as a condition of receiving an incentive payment pursuant to the provisions of this act;

3. Upon an initial determination by the Department that the requirements of paragraph 2 of this subsection have been met, the Department shall forward the application to the Quality Investment Committee. The Committee shall direct the Department to conduct further investigation to enable it to prioritize the applications it receives, which may include but are not limited to the following:

- a. an analysis of the risk that the establishment will cease operations in this state if incentive payments are provided pursuant to the provisions of this act

and an analysis of such risk if incentive payments are not so provided, which shall include an analysis of the minimum level of payment necessary to retain the establishment,

- b. an analysis of the level of support, if any, provided to the establishment by the local community,
- c. an economic impact analysis,
- d. a historical contributions trends analysis, and
- e. a tax revenue projections analysis.

The Department may conduct such analyses itself, in conjunction with the Tax Commission or other state agencies, or may contract for the performance of such analyses;

4. Based upon the results of such analyses, the Committee shall approve those establishments meeting the requirements of this act and shall rate the approved establishments, giving priority according to the following criteria in order:

- a. an establishment that has been determined to be at imminent risk of ceasing operations in this state if incentive payments are not provided, according to the amount of such payments necessary to retain the establishment in this state,
- b. an establishment that has received support from the local community, according to the level of such support,
- c. an establishment that is projected to provide tax revenues to the state over the ten-year period following the start date in an amount which exceeds the amount of tax revenues provided over the ten-year period preceding the start date, according to the difference in such amounts,
- d. an establishment that provides a positive economic impact to the state, and

- e. an establishment that has had positive historical contributions to the state and local community; and

5. Upon approval of an establishment, the Committee shall direct the Department to enter into a quality investment agreement with the establishment for a period not to exceed five (5) years. The agreement shall specify the start date and the duration of the agreement. The agreement shall provide that:

- a. the establishment shall receive an incentive payment in an amount determined by the Committee pursuant to the provisions of Section 6 of this act,
- b. the establishment shall continue to meet the requirements of paragraph 2 of this subsection and all other provisions of this act for the duration of the agreement, and
- c. the establishment shall agree to make an investment in capital costs in this state in a specified amount for each year of the agreement.

C. The Committee shall not direct the Department to enter into any agreement which, over the course of the agreement, would cause the maximum amount to be paid to all approved establishments in any fiscal year to exceed Ten Million Dollars (\$10,000,000.00). If payments to all approved establishments of the percentages of capital costs specified in the agreements would cause the maximum amount to be paid in any fiscal year to exceed such limitation, the Committee shall direct the Department to enter into agreements with establishments as follows:

1. Once an establishment has been initially approved, it shall continue to receive payments pursuant to the terms of its agreement for the duration thereof. For each fiscal year, the Committee shall compute the total amount of such payments previously agreed to; and

2. If such amount is less than Ten Million Dollars (\$10,000,000.00) in any fiscal year, the Committee may direct the

Department to enter into agreements with additional establishments according to the priority set forth in paragraph 4 of subsection B of this section. If necessary to keep the maximum amount to be paid in any fiscal year from exceeding Ten Million Dollars (\$10,000,000.00), the Committee may direct that the percentage of capital costs paid to the establishment be a specific percentage less than ten percent (10%), or may direct that the duration of the agreement be less than the five-year maximum.

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:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Quality Investment Payment Fund". The Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Sections 1354 and 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. Provided, for taxes collected on behalf of a local community that are specified by an appropriation by the local community to be included in the quality investment payments in accordance with Section 4 of this act, those amounts shall also be deposited into the fund. The amount deposited shall equal the sum of an amount provided by the Quality Investment Committee, as determined pursuant to the provisions of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Quality Investment Act. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 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:

A. As soon as practicable after the end of a fiscal year for which an establishment has qualified to receive an investment payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission for up to ten percent (10%) of the total amount of capital costs specified in the quality investment agreement for such fiscal year and actually invested by the establishment in such fiscal year.

B. If the first claim for investment payment is filed later than two (2) years from the start date designated by the Committee, the agreement shall be deemed expired and void.

C. The Tax Commission shall verify for each fiscal year the actual amount of capital costs and the actual tax benefit accrued or to be accrued to the State of Oklahoma. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may reject the establishment's claim.

D. If the establishment does not meet the terms of the agreement and all provisions of this act, investment payments shall cease and shall not be resumed, and the agreement shall expire and be void. The Quality Investment Committee may seek to recover in a court of competent jurisdiction any payments made to an establishment should an establishment not meet the terms of the agreement and all provisions of this act.

E. An establishment that has qualified pursuant to Section 4 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved.

F. An establishment that is receiving investment payments may not apply for additional investment payments for any new capital costs until expiration of its quality investment agreement. Provided, a manufacturer may apply for additional investment

payments pursuant to subsequent quality investment agreements based upon additional capital costs at a different manufacturing site.

G. As soon as practicable after verification of the eligibility of the manufacturer as required by this section, the Tax Commission shall issue a warrant to the establishment.

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:

Notwithstanding any other provision of law, if a qualified establishment receives an investment payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the investment payment was received:

1. Section 625.1 of Title 36 of the Oklahoma Statutes (premium tax credits);

2. Paragraph 7 of Section 1359 of Title 68 of the Oklahoma Statutes (construction materials sales tax refunds);

3. Section 2357.4 of Title 68 of the Oklahoma Statutes (new jobs/investment income tax credits);

4. Section 2902 of Title 68 of the Oklahoma Statutes (state reimbursement to communities for property tax exemptions to manufacturers);

5. Section 3601 et seq. of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Program Act);

6. Section 3651 et seq. of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Incentive Leverage Act);

7. Section 3701 et seq. of Title 68 of the Oklahoma Statutes (Saving Quality Jobs Act);

8. Section 3801 et seq. of Title 68 of the Oklahoma Statutes (Former Military Facility Development Act); and

9. Section 3901 et seq. of Title 68 of the Oklahoma Statutes (Small Employer Quality Jobs Incentive Act).

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4108 of Title 68, unless there is created a duplication in numbering, reads as follows:

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4109 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 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 or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00) or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all investment payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 10. AMENDATORY 25 O.S. 2001, Section 307, as amended by Section 1, Chapter 175, O.S.L. 2003 (25 O.S. Supp. 2003, Section 307), is amended to read as follows:

Section 307. A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or the student's parent, attorney or legal guardian;

6. Discussing matters involving a specific handicapped child;

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act; or

9. Discussing the following:

- a. the investigation of a plan or scheme to commit an act of terrorism,

- b. assessments of the vulnerability of government facilities or public improvements to an act of terrorism,
- c. plans for deterrence or prevention of or protection from an act of terrorism,
- d. plans for response or remediation after an act of terrorism,
- e. information technology of the public body but only if the discussion specifically identifies:
 - (1) design or functional schematics that demonstrate the relationship or connections between devices or systems,
 - (2) system configuration information,
 - (3) security monitoring and response equipment placement and configuration,
 - (4) specific location or placement of systems, components or devices,
 - (5) system identification numbers, names, or connecting circuits,
 - (6) business continuity and disaster planning, or response plans, or
 - (7) investigation information directly related to security penetrations or denial of services, or
- f. the investigation of an act of terrorism that has already been committed.

For the purposes of this subsection, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

5. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6. The Oklahoma Health Research Committee, as provided for in Section 5060.14 of Title 74 of the Oklahoma Statutes, for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

7. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes;

8. The Child Death Review Board, as provided for in Section 1150.2 of Title 10 of the Oklahoma Statutes, for purposes of receiving and conferring on matters pertaining to materials declared confidential by law;

9. The Domestic Violence Fatality Review Board, as provided for in Section 1601 of Title 22 of the Oklahoma Statutes;

10. All nonprofit foundations, boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups supported in whole or part by public funds or entrusted with the expenditure of public funds for purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to remain or to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or

services or if public disclosure would violate the confidentiality of the business; ~~and~~

11. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense ~~System~~ Act; and

12. The Quality Investment Committee for purposes of discussing applications and confidential materials pursuant to the terms of the Oklahoma Quality Investment Act.

D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.

E. No public body may go into an executive session unless the following procedures are strictly complied with:

1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;

2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and

3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.

F. A willful violation of the provisions of this section shall:

1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and

2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

SECTION 11. This act shall become effective July 1, 2004.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 13th day of April, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives