

ENROLLED SENATE
BILL NO. 1176

By: Williams and Smith of the
Senate

and

Peters, Lamons, McClain,
Adkins, Peterson (Ron),
Benge, Calvey, Smaligo,
Trebilcock and Winchester
of the House

An Act relating to public finance; amending 62 O.S. 2001, Sections 841, 842, 843, 844, 846 and 847, which relate to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act; modifying definitions; making certain governmental entities eligible for certain matching payments; providing limit on such payment for specified project costs; requiring certain information to be provided as part of application process; providing for computation of maximum aggregate payments in certain areas; modifying dates by which investments or improvements must be made in order to qualify; authorizing promulgation of rules by Department of Commerce related to Oklahoma Local Development and Enterprise Zone Incentive Leverage Act; imposing certain requirements upon local governmental entities related to increment districts; authorizing payment of certain matching amounts; providing for computation and for term of matching payment; establishing date after which payments may be made; providing for issuance of specified warrant; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2001, Section 841, is amended to read as follows:

Section 841. As used in the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act:

1. "Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship, corporation, limited liability company or other legally constituted business entity;

2. "Enterprise zone" means an area as defined pursuant to subparagraph a, b, c or d of paragraph 5 of Section 690.2 of Title 62 of the Oklahoma Statutes this title;

3. "Estimated direct state benefits" means the incremental state tax revenues estimated by the Oklahoma Department of Commerce to accrue to the state from new sales and/or investments originating outside the state borders during the period of apportionment of local sales taxes, as a result of the project or projects described in the related project plan. In projecting such benefits, the Oklahoma Department of Commerce shall consider, if practicable, whether or not the project plan involves an enterprise:

- a. relocating from within the state,
- b. subject to or in the process of recruitment by two or more governmental entities within the state, or
- c. which will be in direct competition with an existing enterprise located in the state;

4. "Estimated direct state costs" means the costs projected by the Oklahoma Department of Commerce to be incurred by the state during the period of apportionment of local sales taxes, as a result of the project or projects described in the related project plan;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Facility" means the definition contained in paragraph 8 of Section 690.2 of Title 62 of the Oklahoma Statutes this title;

~~4.~~ 7. "Governing body" means a county, city or town the governing board of a local governmental entity in the case of a single incentive district or increment district when the boundaries of the district are coextensive with or contained within the jurisdiction of any such single local governmental entity or the governing boards of a combination of counties, cities, or towns forming an incentive district or an increment district pursuant to the provisions of the Local Development Act, Section 850 et seq. of Title 62 of the Oklahoma Statutes;

~~5.~~ 8. "Incentive district" means an area created pursuant to the provisions of the Local Development Act, Section 850 et seq. of Title 62 of the Oklahoma Statutes, including Section 856 of Title 62 of the Oklahoma Statutes this title; and

~~6.~~ 9. "Increment district" means an area created pursuant to the provisions of the Local Development Act;

10. "Local governmental entity" means a county, city or town forming an incentive district or an increment district pursuant to the provisions of the Local Development Act;

11. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross taxable sales derived

from the project during the period of apportionment of local sales taxes by the local governmental entity;

12. "Public entity" means those entities described in the Local Development Act;

13. "State ~~matching incentive~~ or "state matching incentive for local enterprise matching payment" means the payment authorized by subsection A of Section ~~13~~ 844 of this ~~act~~ title; and

14. "State local government matching payment" means the payment authorized by subsection D of Section 844 of this title.

SECTION 2. AMENDATORY 62 O.S. 2001, Section 842, is amended to read as follows:

Section 842. A. An enterprise which locates its facility within an enterprise zone or which expands its existing facility after the designation of an enterprise zone as authorized by law and which is located in an incentive district as authorized pursuant to the provisions of the Local Development Act shall be eligible for the state ~~matching incentive for~~ local enterprise matching payment authorized pursuant to subsection A of Section ~~13~~ 844 of this ~~act~~ title.

B. A local governmental entity which constructs public improvements within an enterprise zone in accordance with a project plan as authorized pursuant to the provisions of the Local Development Act shall be eligible for the state local government matching payment authorized pursuant to subsection D of Section 844 of this title; provided, no state local government matching payment shall be made for project costs in relation to any project within a project plan that provides for more than ten percent (10%) of the net leasable space to be used for retail purposes or provides for state payments to be used to supplant local revenue currently being expended within the increment district boundaries. In order to be eligible for state local government matching payments, a local government entity shall provide to the Oklahoma Department of Commerce as part of the application provided for in subsection J of this section:

1. An estimate of net revenues likely to be derived from export of goods outside the state borders or inflow of capital or sales from outside the state border; and

2. Certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars (\$1,000,000.00) in payroll, exclusive of payroll for construction, or Five Million Dollars (\$5,000,000.00) in investment.

C. For purposes of the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, an enterprise engaged in a retail activity, where otherwise prohibited by the Oklahoma Enterprise Zone Act for purposes of the benefits and incentives extended pursuant to ~~Section 690.1 et seq. of Title 62 of the Oklahoma Statutes~~ the Oklahoma Enterprise Zone Act, shall be

considered an eligible enterprise for purposes of the state local enterprise matching incentive payment and the income tax credit authorized by the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.

~~C.~~ D. The combined maximum amount of state ~~matching incentive~~ for local enterprise payment matching payments and the amount of income tax credit authorized pursuant to Section ~~17~~ 2357.81 of ~~this act~~ Title 68 of the Oklahoma Statutes for an enterprise per fiscal year shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

~~D.~~ ~~For~~ E. Except as provided in subsection H of this section, for purposes of the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, the maximum amount of aggregate investment in all qualifying facilities located in any single county which can qualify for a state local enterprise matching incentive payment pursuant to subsection A of Section 13 844 of this act title or for an income tax credit as authorized by Section 17 2357.81 of this act Title 68 of the Oklahoma Statutes shall be computed for each county of the state by multiplying Two Hundred Dollars (\$200.00) times the population of the county according to the 1999 estimate provided by the United States Bureau of the Census.

~~E.~~ F. The computation required by ~~this~~ subsection E of this section shall be the maximum amount of aggregated investment qualifying for the purposes of all enterprises for the duration of the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.

~~F.~~ G. The aggregate investment limit for all facilities located within a county which may qualify for the state local enterprise matching incentive payments pursuant to subsection A of Section 13 844 of this act title or for an income tax credit as authorized by Section ~~17~~ 2357.81 of ~~this act~~ Title 68 of the Oklahoma Statutes shall:

1. Not be less than Twenty Million Dollars (\$20,000,000.00) for counties with a population of less than one hundred thousand (100,000) persons; and
2. Not be greater than Forty Million Dollars (\$40,000,000.00) for all other counties of the state.

~~G.~~ H. The aggregate limit for all state local government matching payments made to any public entity on behalf of any local governmental entity within a single county pursuant to subsection D of Section 844 of this title for the duration of the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act shall be an amount equal to the net benefit rate multiplied by the taxable gross sales derived from the project, as certified by the Secretary of Commerce.

~~I.~~ I. The ~~state matching incentive payment~~ payments authorized by Section ~~13~~ 844 of this ~~act~~ title and the income tax credit authorized by Section ~~17~~ 2357.81 of ~~this act~~ Title 68 of the Oklahoma Statutes shall be available for business and governmental entities qualifying pursuant to the Local Development Act for

investments made within an incentive district or for improvements made within an increment district prior to December 31, ~~2003~~ 2007, or for which an incentive district or an increment district has been created prior to December 31, ~~2003~~ 2007, if the ~~investment takes place~~ investments or improvements are begun not later than December 31, ~~2004~~ 2008.

~~H.~~ J. The Oklahoma Department of Commerce ~~may~~ shall promulgate rules to establish a procedure for an enterprise or local government entity to make application for state local enterprise and state local government matching ~~incentive~~ payments under circumstances in which the amount of the investment in a facility would be in excess of the applicable aggregate investment limit pursuant to ~~subsection F of~~ this section.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 843, is amended to read as follows:

Section 843. A. In order to receive the state local enterprise matching ~~incentive~~ payment pursuant to the provisions of subsection A of Section ~~13~~ 844 of this ~~act~~ title, the enterprise shall obtain a certification, provided by the governing body of the local governmental entity creating the incentive district, acknowledged by the chief elected official of the local governing body that the enterprise has qualified pursuant to the Local Development Act for sales tax exemption. The certification document shall include:

1. The beginning date of the exemption;
2. The ending date of the exemption;
3. The total amount of projected investment to construct or expand the facility during the period for which the incentives available pursuant to the Local Development Act will be in force and effect together with a certification by the Oklahoma Department of Commerce that the facility is located in an enterprise zone; and
4. The legal name and business entity classification of the entity to which exemption is afforded or to which sales tax payment is made by the local governmental entity or entities pursuant to the provisions of the Local Development Act.

B. The local governing body shall provide a copy of the certification document to the Oklahoma Tax Commission.

C. After the enterprise provides a certification from the local governing body, the ~~Oklahoma~~ Tax Commission shall make payment to the enterprise identified in the certification document equal to the amount of the sales tax from which the enterprise is certified as exempt as identified in the certification in the manner prescribed by subsection A of Section 13 844 of this ~~act~~ title.

D. The state local enterprise matching ~~incentive~~ payment shall be made only for sales tax foregone by local governmental entities or rebated to the business enterprise by local entities for purchases made by the business enterprise and not on the basis of

any sales tax collected by the business enterprise from consumers or users on taxable sales made by the enterprise.

E. In order to receive the state local governmental matching payment pursuant to the provisions of subsection D of Section 844 of this title, the local governmental entity shall provide to the Tax Commission a certification, acknowledged by its mayor or chairperson, that such local governmental entity has created an increment district pursuant to the Local Development Act which qualifies for a state local government matching payment. The certification document shall include:

1. The beginning date of the increment district;
2. The ending date of the increment district;
3. A description of the improvements authorized by the project plan for which the state local government matching payments will be used;
4. A certification by the Oklahoma Department of Commerce that the increment district is located in an enterprise zone;
5. The amount of the local sales taxes which have been apportioned during the previous six-month period by the local governmental entity for the payment of project costs pursuant to the provisions of the Local Development Act; and
6. The name of the public entity identified in the project plan pursuant to Section 858 of this title as the entity authorized to carry out the project plan.

After the local governmental entity provides such certification, the Tax Commission shall make payment to the designated public entity in an amount equal to the lesser of the certified amount of the local sales taxes apportioned during the previous six (6) months or the estimated net direct state benefits as prescribed by subsection D of Section 844 of this title.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 844, is amended to read as follows:

Section 844. A. If an enterprise is located within an incentive district pursuant to the provisions of Section 856 of ~~Title 62 of the Oklahoma Statutes~~ this title, and the enterprise either constructs or expands a facility that is located within an enterprise zone designated pursuant to the provisions of Section 690.2 of ~~Title 62 of the Oklahoma Statutes~~ this title, the enterprise shall be eligible for a state ~~matching incentive for~~ matching payment equal to the amount of sales tax exemption afforded to the enterprise pursuant to Section 860 of ~~Title 62 of the Oklahoma Statutes~~ this title.

B. The state local enterprise matching incentive payment shall be made for the twelve-month period preceding March 1 of each calendar year ~~beginning with the twelve-month period preceding March 1, 2001.~~ The state local government matching payment shall be made

for the six-month periods preceding March 1 and September 1 of each calendar year.

C. The state local enterprise matching incentive payment shall be made in an amount equal to the amount of sales tax for which the enterprise has received payment during the period prescribed by subsection B of this section pursuant to Section 860 of ~~Title 62 of the Oklahoma Statutes~~ this title.

D. Beginning July 1, 2005, the state local government matching payment shall be made in an amount equal to the lesser of the amount of local sales taxes which have been apportioned under the applicable project plan during the period prescribed by subsection B of this section pursuant to Section 861 of this title or the net benefit rate multiplied by the actual gross sales derived from the project, pursuant to the limits provided in Section 842 of this title.

SECTION 5. AMENDATORY 62 O.S. 2001, Section 846, is amended to read as follows:

Section 846. A. As soon as practicable after verification of the amount of the state local enterprise matching incentive leverage payment required payments authorized by Section ~~43~~ 844 of this ~~act~~ title, the Oklahoma Tax Commission shall issue a warrant to the qualifying establishment in the amount of the sales tax ~~from which the establishment was exempt~~ exempted or apportioned pursuant to the applicable provisions of the Local Development Act, subject to the limitations imposed by Section ~~44~~ 842 of this ~~act~~ title.

B. As soon as is practicable after verification of the amount of state local government matching payments authorized by Section 844 of this title, the Oklahoma Tax Commission shall issue a warrant to the qualifying local government entity in the amount provided for in subsection D of Section 844 of this title, subject to the limitations imposed by Section 842 of this title.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 847, is amended to read as follows:

Section 847. A. The Oklahoma Tax Commission shall maintain a record of state ~~matching incentive for~~ local enterprise matching payments and state local government matching payments made pursuant to Section ~~43~~ 844 of this ~~act~~ title and a record of income tax credits claimed pursuant to Section ~~17~~ 2357.81 of ~~this act~~ Title 68 of the Oklahoma Statutes.

B. The Tax Commission shall prepare a report separately identifying the amounts described in subsection A of this section and shall submit the report prior to April 1 each year to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 7. 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 24th day of May, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2004.

Presiding Officer of the House
of Representatives