ENGROSSED SENATE
BILL NO. 755

By: Leftwich, Gumm and Corn of the Senate

and

Nance of the House

[economic development - authorizing quality investment agreements - 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 4201 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 4202 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 yield higher long-term benefits for job retention and increase the wealth of the state,

b. that create competitive advantages for the State of Oklahoma in attracting and retaining industries and thus jobs, and

c. that hold the promise of significant modernization and retooling that will assure 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 caused by retention of jobs and investment and the placing of new investment, created as a result of the establishment modernizing and retooling in, and thereby remaining and growing in the State of Oklahoma as reflected by the 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 shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company or 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 4203 of Title 68, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Quality Investment Act:

1. “At-risk establishments” are those manufacturing establishments presently existing in Oklahoma which the Quality Investment Committee, as defined in paragraph 7 of this section,

finds would be lost within the state based on changes in global economies, establishment structure, consolidation attempts of establishments, and which are structurally noncompetitive but such position can be offset with new investment in plant and such other factors as determined on a case-by-case basis, unless incentives are offered;

2. "Capital costs" means costs for land, buildings, improvements to buildings, fixtures and for machinery and equipment as those terms are described in Section 2902 of Title 68 of the Oklahoma Statutes;

3. "Oklahoma Department of Commerce" means that agency of the state created in Section 5003.2 of Title 74 of the Oklahoma Statutes;

4. "Economic impact" means economic impact analyses that identify the value, in terms of sales tax and income tax revenues to the state and to the local community, that the retention, expansion or modernization of the manufacturing site provides. The Oklahoma Department of Commerce may contract for the performance of an economic impact analysis to aid it in determining whether to enter into a quality investment agreement with a particular establishment, upon recommendation of the Quality Investment Committee;

5. "Historical contributions trends" means analyses of historical contributions to the state and local economies that an establishment has had on growth in jobs, tax base, payroll and tax revenue. Analyses shall include consideration of positive trends attributable to suppliers of the establishment. The Oklahoma Department of Commerce may contract for the performance of a historical contributions analysis to aid it in determining whether to enter into a quality investment agreement with a particular establishment, upon recommendation of the Quality Investment Committee;

6. “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;

7. “Quality Investment Committee” means a state board that consists 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 Board of the Oklahoma Center for the Advancement of Science and Technology, and

g. the State Director of the Oklahoma Department of Career Technology Education;

8. “Tax revenue projections” means an analysis of historic taxes collected from the establishment in the local community and in the state overall over the previous ten (10) years in order to determine:

a. the average of the growth percentages to determine the projected growth in such revenues to the community and the state over the following ten (10) years if no retooling occurs but retention is assumed to be a constant and remains stagnant,

b. the modernization or retooling project’s estimated impact on tax revenues and growth rates over the following ten (10) years, and

c. the projections of loss in tax revenues should the plant location close and operations, in whole or in part, are removed from the state.

The Oklahoma Department of Commerce may contract for performance of tax revenue projections analyses to aid it in determining whether to enter into an agreement upon recommendation of the Quality Investment Committee;

9. "Establishment" means a manufacturer that is a partnership, limited partnership, corporation, limited liability company, limited liability partnership, or sole proprietorship. The establishment shall enter into an agreement pertaining to only one manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of the establishment, or any related entities of the establishment is contemplated. An establishment may have multiple contracts due to multiple sites or multiple expansions due to retooling and modernization at one site;

10. "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; and

11. "Start date" means the date on which an establishment may begin accruing benefits for investment of new capital costs in a manufacturing site that is assigned in the agreement with the Oklahoma Department of Commerce.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4204 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in the Oklahoma Quality Investment Act may enter into a quality investment agreement to receive annual investment payments over a

five-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Investment Act in an amount which shall not exceed ten percent (10%) of the amount of actual capital costs invested pursuant to a quality investment contract developed and executed pursuant to this act. Economic impacts, historical contributions trends, and tax revenue projections analyses conducted by or on behalf of the Oklahoma Department of Commerce may be performed and reviewed for the purposes of determining the desirability of offering a quality investment agreement and the percentage of investment payments. Provided, investment payments shall in no event exceed ten percent (10%) of the retooling or modernization capital costs actually purchased and existing on the Oklahoma site that is the subject of the agreement. The Quality Investment Committee and the Oklahoma Department of Commerce are directed to give equal weight to retention benefits and growth benefits reflected in these analyses. Provided, a county, town or municipality in which an establishment eligible to receive annual investment payments pursuant to this section is located may join in the quality investment agreement with the state and the establishment and set out that it intends to annually appropriate a portion of local sales tax revenue that shall be included in the quality investment payments.

Provided further, the Department of Commerce may not enter into contracts that would result in payments from state revenues to all establishments in the program in an amount in excess of Ten Million Dollars ($10,000,000.00) in any fiscal year. The maximum amount of projected investment for purposes of a contract made pursuant to this act shall not exceed Fifty Million Dollars ($50,000,000.00).

B. In order to receive investment payments, an establishment shall apply to and enter into a quality investment agreement with the Oklahoma Department of Commerce on behalf of the state and the local community when the town, city or county resolve to join with

the agreement. The application shall be on a form prescribed by the Quality Investment Committee and shall contain such information as may be required by the Committee and the Oklahoma Department of Commerce to determine if the applicant is qualified.

C. In order to qualify to receive such payments, the establishment applying shall be required to:

1. Be engaged in manufacturing in activities described under Industry Group Nos. 31 through 33 of the NAICS Manual;

2. Incur capital costs for new retooling or modernization projected to equal or exceed One Million Dollars ($1,000,000.00) within twenty-four (24) months; and

3. Enter into a quality investment agreement specifying:

a. the amount of capital investment the establishment must make within twenty-four (24) months of the start date in order to remain qualified to receive payments,

b. the total minimum amount of Oklahoma taxable payroll it will maintain in this state during the course of the agreement,

c. the total amount in investment payments it may receive from state revenues,

d. if applicable, the amount of local sales tax revenues a county or municipality intends to apportion to the establishment annually, and

e. that it will offer "basic health insurance" as defined in the Oklahoma Quality Jobs Program Act, within twelve (12) months of entering into a quality investment agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4205 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 municipality or county that are specified by an appropriation by the city, town or county as part of the local community to be included in the quality investment payments in accordance with Section 4 of this act, then 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 4206 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a calendar 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 one-tenth (1/10) or less of the total amount of investment identified and specified in its quality investment agreement. Provided, in the event the establishment applies for a payment before all investment for retooling or modernization has occurred, the payment shall be reduced by the percentage of investment costs predicted but not incurred at the time of the claim as those costs bear to the whole investment. In no event shall the first claim for investment payment be filed later than two (2) years from the start date designated by the Quality

Investment Committee. The Tax Commission shall verify for each calendar year the actual amount of capital investment in Oklahoma and the amounts of local communities' sales tax rebates for the establishment. 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 establishments' claim.

B. If the capital costs for investment in retooling or investment does not meet or exceed One Million Dollars ($1,000,000.00) within twenty-four (24) months of the start date of the establishment as set out in its agreement with the Quality Investment Committee, investment payments shall cease and shall not be resumed.

C. An establishment that has qualified pursuant to Section 5 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved.

D. An establishment that is receiving investment payments may not apply for additional investment payments for any new capital improvement projects until twelve (12) quarters after receipt of the first investment payment, or until the establishment's actual verified capital costs of retooling and modernization equals or exceeds One Million Dollars ($1,000,000.00), whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional investment payments based upon additional retooling and modernization capital costs and investment.

E. 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 4207 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 2357.7 of Title 68 of the Oklahoma Statutes (venture capital investment credits);

5. Section 2-11-303 of Title 27A of the Oklahoma Statutes (pollution control equipment investment income tax credits);

6. Section 2357.22 of Title 68 of the Oklahoma Statutes (income tax credits for investment in clean burning motor fuel vehicles);

7. Section 2357.31 of Title 68 of the Oklahoma Statutes (small business income tax credits);

8. Section 54003 of Title 68 of the Oklahoma Statutes (research and development or computer services sales tax refunds);

9. Subsections C and D of Section 2357.29 of Title 68 of the Oklahoma Statutes (income tax credits for property damaged by tornado);

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

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

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

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

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

15. Sections 3651 through 3659 of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Incentive Leverage Act); and

16. Sections 4101 et seq. of Title 68 of the Oklahoma Statutes (Oklahoma Specialized Quality Investment Act).

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4208 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 4209 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. 2004, 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 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 for purposes of receiving and conferring on matters pertaining to materials declared confidential by law;

9. The Domestic Violence Fatality Review Board as provided 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. AMENDATORY Section 1, Chapter 391, O.S.L. 2004 (68 O.S. Supp. 2004, Section 4101), is amended to read as follows:

Section 4101. This act shall be known and may be cited as the "Oklahoma Specialized Quality Investment Act".

SECTION 12. AMENDATORY Section 3, Chapter 391, O.S.L. 2004 (68 O.S. Supp. 2004, Section 4103), is amended to read as follows:

Section 4103. For purposes of the Oklahoma Specialized 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 a qualified 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. "Qualified establishment" means a business entity engaged in the activity described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification manual, latest revision. No establishment that has been certified as eligible to participate in the Oklahoma Quality Jobs Incentive Leverage Act incentive program shall be eligible for any investment

payment pursuant to the Oklahoma Specialized Quality Investment Act. A qualified 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~~ this title. No combination of other locations of an establishment or any related entities of an establishment shall be included in a quality investment agreement. An establishment may enter into additional quality investment agreements for additional sites;

4. "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;

5. "Quality investment agreement" means an agreement with duration, for purposes of computing the total incentive payment amount, of not more than five (5) years entered into between a qualified establishment and the Department; and

6. "Start date" means the date on which a qualified 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.

SECTION 13. AMENDATORY Section 5, Chapter 391, O.S.L. 2004 (68 O.S. Supp. 2004, Section 4105), is amended to read as follows:

Section 4105. There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Specialized 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~~ this title for deposit into the fund. The amount deposited shall equal the sum of an amount required for making investment payments, 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 Specialized Quality Investment Act. The liability of the State of Oklahoma to make the investment payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 14. This act shall become effective July 1, 2005.

SECTION 15. 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 15th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

_____
Presiding Officer of the House
of Representatives