

1 development of tourism attractions and film or music production
2 facilities in this state;

3 2. That it is in the best interests of the citizens of this
4 state to induce the creation of new or the expansion of existing
5 tourism attractions and film or music production facilities within
6 this state in order to advance the public purposes of relieving
7 unemployment by preserving and creating jobs that would not exist if
8 not for the inducements to be offered by this state to approved
9 companies, and by preserving and creating sources of tax revenues
10 for the support of public services provided by this state;

11 3. That the authority prescribed by this act, and the purposes
12 to be accomplished under the provisions of this act, are proper
13 governmental and public purposes for which public funds may be
14 expended; and

15 4. That the inducement of the creation or expansion of tourism
16 attraction projects and film or music production facility projects
17 is of paramount importance, mandating that the provisions of this
18 act be liberally construed and applied in order to advance public
19 purposes.

20 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.36, is
21 amended to read as follows:

22 Section 2357.36 As used in the Oklahoma Tourism Development
23 Act:

1 1. "Agreement" means an agreement entered into pursuant to
2 Section 2357.39 of this title, by and between the Director of the
3 Oklahoma Tourism and Recreation Department and an approved company,
4 with respect to a tourism attraction project or film or music
5 production and development facility project;

6 2. "Approved company" means any eligible company that is
7 seeking to undertake a tourism attraction or film or music
8 production and development facility project and is approved by the
9 Director pursuant to Sections 2357.38 and 2357.39 of this title;

10 3. "Approved costs" means:

11 a. obligations incurred for labor and to vendors,
12 contractors, subcontractors, builders and suppliers in
13 connection with the acquisition, construction,
14 equipping and installation of a tourism attraction
15 project or film or music production and development
16 facility project,

17 b. the costs of acquiring real property or rights in real
18 property in connection with a tourism attraction
19 project or film or music production and development
20 facility project, and any costs incidental thereto,

21 c. the costs of contract bonds and of insurance of all
22 kinds that may be required or necessary during the
23 course of the acquisition, construction, equipping and

- 1 installation of a tourism attraction project or film
2 or music production and development facility project
3 which is not paid by the vendor, supplier, contractor,
4 or otherwise provided,
- 5 d. all costs of architectural and engineering services
6 including, but not limited to, estimates, plans and
7 specifications, preliminary investigations, and
8 supervision of construction and installation, as well
9 as for the performance of all the duties required by
10 or consequent to the acquisition, construction,
11 equipping and installation of a tourism attraction
12 project or film or music production and development
13 facility project,
- 14 e. all costs required to be paid under the terms of any
15 contract for the acquisition, construction, equipping
16 and installation of a tourism attraction project or
17 film or music production and development facility
18 project,
- 19 f. all costs required for the installation of utilities
20 in connection with a tourism attraction project or
21 film or music production and development facility
22 project including, but not limited to, water, sewer,
23 sewage treatment, gas, electricity and communications,

1 and including off-site construction of utility
2 extensions paid for by the approved company, and
3 g. all other costs comparable with those described in
4 this paragraph;

5 4. "Director" means the Director of the Oklahoma Tourism and
6 Recreation Department or the Director's designated representative;

7 5. "Eligible company" means any corporation, limited liability
8 company, partnership, sole proprietorship, business trust or any
9 other entity, operating or intending to operate a tourism attraction
10 project or undertake film or music production and development
11 facility project, whether owned or leased, within this state that
12 meets the standards promulgated by the Director pursuant to Section
13 2357.37 of this title;

14 6. "Final approval" means the action taken by the Director
15 authorizing the eligible company to receive inducements under
16 Section 2357.40 of this title;

17 7. "Increased state sales tax liability" means that portion of
18 an approved company's reported state sales tax liability resulting
19 from taxable sales of goods and services to its customers at the
20 tourist attraction or for purposes of a film or music production and
21 development facility project for any monthly sales tax reporting
22 period after the approved company provides the certification
23 required by subsection B of Section 2357.40 of this title, which

1 exceeds the reported state sales tax liability for sales to its
2 customers for the same month in the calendar year immediately
3 preceding the certification;

4 8. "Inducements" means the income tax credit or sales tax
5 credit as prescribed in Section 2357.40 of this title;

6 9. "Preliminary approval" means the action taken by the
7 Director conditioned upon final approval by the Director upon
8 satisfaction by the eligible company of the requirements of the
9 Oklahoma Tourism Development Act;

10 10. a. "Tourism attraction" means:

- 11 (1) a cultural or historical site,
- 12 (2) a recreational or entertainment facility,
- 13 (3) an area of natural phenomenon or scenic beauty,
- 14 (4) a theme park,
- 15 (5) an amusement or entertainment park,
- 16 (6) an indoor or outdoor play or music show,
- 17 (7) a botanical garden, or
- 18 (8) a cultural or educational center.

19 b. A tourism attraction shall not include:

- 20 (1) lodging facilities, unless the facilities
21 constitute a portion of a tourism attraction
22 project and represent less than fifty percent

1 (50%) of the total approved costs of the tourism
2 attraction project,
3 (2) facilities that are primarily devoted to the
4 retail sale of goods, unless the goods are
5 created at the site of the tourism attraction
6 project or if the sale of goods is incidental to
7 the tourism attraction project,
8 (3) facilities that are not open to the general
9 public,
10 (4) facilities that do not serve as a likely
11 destination where individuals who are not
12 residents of this state would remain overnight in
13 commercial lodging at or near the tourism
14 attraction project,
15 (5) facilities owned by the State of Oklahoma or a
16 political subdivision of this state, or
17 (6) facilities established for the purpose of
18 conducting legalized gambling. However, a
19 facility regulated under Section 200 et seq. of
20 Title 3A of the Oklahoma Statutes shall be a
21 tourism attraction for purposes of the Oklahoma
22 Tourism Development Act for any approved project
23 as outlined in subparagraph a of this paragraph

1 or for an approved project relating to pari-
2 mutuel racing at the facility and not for
3 establishing a casino or for offering casino-
4 style gambling; and

5 11. "Tourism attraction project", "film or music production and
6 development facility project" or "project" means:

7 a. the acquisition, including the acquisition of real
8 estate by leasehold interest with a minimum term of
9 ten (10) years, construction, and equipping of a
10 tourism attraction or film or music production and
11 development facility, and

12 b. the construction and installation of improvements to
13 facilities necessary or desirable for the acquisition,
14 construction, and installation of a tourism attraction
15 or film or music production and development facility,
16 including, but not limited to:

17 (1) surveys, and

18 (2) installation of utilities, which may include:

19 (a) water, sewer, sewage treatment, gas,
20 electricity, communications, and similar
21 facilities, and

1 (b) off-site construction of utility extensions
2 to the boundaries of the real estate on
3 which the facilities are located,
4 all of which are to be used to improve the economic
5 situation of the approved company in a manner that
6 shall allow the approved company to attract tourists.

7 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.37, is
8 amended to read as follows:

9 Section 2357.37 A. The Director of the Oklahoma Tourism and
10 Recreation Department, with approval of the Oklahoma Tourism and
11 Recreation Commission, shall establish standards for the making of
12 applications for inducements to eligible companies and their tourism
13 attraction projects, or film and music production and development
14 facility projects by the promulgation of rules in accordance with
15 the Administrative Procedures Act.

16 B. With respect to each eligible company making an application
17 to the Director for inducements, and with respect to the tourism
18 attraction or film and music production and development facility
19 project described in the application, the Director shall make
20 inquiries and request materials of the applicant that shall include,
21 but shall not be limited to:

22 1. Marketing plans for the project that target individuals who
23 are not residents of this state;

- 1 2. A description and location of the project;
- 2 3. Capital and other anticipated expenditures for the project
- 3 that indicate that the total cost of the project shall exceed Five
- 4 Hundred Thousand Dollars (\$500,000.00) and the anticipated sources
- 5 of funding therefor;
- 6 4. The anticipated employment and wages to be paid at the
- 7 project;
- 8 5. Business plans which indicate the average number of days in
- 9 a year in which the project will be in operation and open to the
- 10 public, if applicable; and
- 11 6. The anticipated revenues and expenses generated by the
- 12 project.

13 Based upon a review of these materials, if the Director determines

14 that the eligible company and the tourism attraction or film and

15 music production and development facility project may reasonably be

16 expected to satisfy the criteria for final approval in subsection C

17 of this section, then the Director may consider granting a

18 preliminary approval of the eligible company and the tourism

19 attraction project pursuant to subsection B of Section 2357.38 of

20 this title.

21 C. ~~After~~ 1. For a tourism attraction project, after granting a

22 preliminary approval, the Director shall engage the services of a

23 competent consulting firm which shall submit to the Director a

1 report analyzing the data made available by the eligible company and
2 which shall collect and analyze additional information necessary to
3 determine that, in the independent judgment of the consultant, the
4 tourism attraction project: ~~1. Shall~~ will:

5 a. attract at least twenty-five percent (25%) of its
6 visitors from among persons who are not residents of
7 this state;

8 ~~2.~~

9 b. have costs in excess of Five Hundred Thousand Dollars
10 (\$500,000.00);

11 ~~3. Shall~~

12 c. have a significant and positive economic impact on
13 this state considering, among other factors, the
14 extent to which the tourism attraction project will
15 compete directly with existing tourism attractions in
16 this state, and the amount by which increased tax
17 revenues from the tourism attraction project will
18 exceed the sales tax credit or income tax credit
19 allowed pursuant to Section 2357.40 of this title;

20 ~~4. Shall~~

21 d. produce sufficient revenues and public demand to be
22 operating and open to the public on a regular and
23 persistent basis; and

1 D. The eligible company shall pay for the cost of the
2 consultant's report and shall cooperate with the consultant and
3 provide all of the data that the consultant deems necessary to make
4 a determination of this section.

5 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.38, is
6 amended to read as follows:

7 Section 2357.38 A. The Director of the Oklahoma Tourism and
8 Recreation Department, with the approval of the Oklahoma Tourism and
9 Recreation Commission, shall establish standards for preliminary
10 approval and final approval of eligible companies and their projects
11 by the promulgation of rules in accordance with the Administrative
12 Procedures Act.

13 B. The Director may give preliminary approval by designating an
14 eligible company as a preliminarily approved company and
15 preliminarily authorizing the undertaking of the tourism attraction
16 project or film or music production and development facility
17 project.

18 C. The Director shall review the report of the consultant
19 prepared pursuant to subsection C of Section 2357.37 of this title
20 and other information that has been made available to the Director
21 in order to assist the Director in determining whether the tourism
22 attraction project or film and music production and development

1 facility project will further the purposes of the Oklahoma Tourism
2 Development Act.

3 D. The criteria for final approval of eligible companies and
4 tourism attraction projects or film and music production and
5 development facility projects shall include, but shall not be
6 limited to, the criteria set forth in subsection C of Section
7 2357.37 of this title.

8 E. After a review of the relevant materials, the consultant's
9 report, other information made available to the Director, and
10 completion of other inquiries, the Director may give final approval
11 to the eligible company's application for a tourism attraction
12 project or film and music production and development facility
13 project and may grant to the eligible company the status of an
14 approved company. The decision reached by the Director may be
15 appealed by the eligible company to the Oklahoma Tourism and
16 Recreation Commission. The decision of the Oklahoma Tourism and
17 Recreation Commission shall constitute the final administrative
18 decision of the Oklahoma Tourism and Recreation Department.

19 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.39, as
20 last amended by Section 1, Chapter 446, O.S.L. 2004 (68 O.S. Supp.
21 2004, Section 2357.39), is amended to read as follows:

22 Section 2357.39 A. Upon granting final approval, the Director
23 of the Oklahoma Tourism and Recreation Department may enter into an

1 agreement with an approved company with respect to its tourism
2 attraction project or film and music production and development
3 facility project. The terms and provisions of each agreement shall
4 include, but shall not be limited to:

5 1. The amount of approved costs, which shall be determined by
6 negotiations between the Director and the approved company;

7 2. A date certain by which the approved company shall have
8 completed the tourism attraction project or film and music
9 production and development facility project. Within three (3)
10 months of the completion date, the approved company shall document
11 the actual cost of the ~~tourism attraction~~ project through a
12 certification of the costs by an independent certified public
13 accountant acceptable to the Director; and

14 3. The following provisions:

15 a. the term of the agreement shall be ten (10) years from
16 the later of:

17 (1) the date of the final approval of the tourism
18 attraction project or film and music production
19 and development facility project, or

20 (2) the completion date specified in the agreement,
21 if the completion date is within two (2) years of
22 the date of the final approval of the tourism
23 attraction project or film and music production

1 and development facility project. However, the
2 term of the agreement may be extended for up to
3 two (2) additional years by the Director, with
4 the advice and consent of the Oklahoma Tax
5 Commission, if the Director determines that the
6 failure to complete the tourism attraction
7 project or film and music production and
8 development facility project within two (2) years
9 resulted from:

10 (a) unanticipated and unavoidable delay in the
11 construction of the tourism attraction
12 project or film and music production and
13 development facility project,

14 (b) an original completion date for the tourism
15 attraction project or film and music
16 production and development facility project,
17 as originally planned, which will be more
18 than two (2) years from the date
19 construction began, or

20 (c) a change in business ownership or business
21 structure resulting from a merger or
22 acquisition,

1 b. in any tax year during which an agreement is in
2 effect, if the amount of income tax due from the
3 approved company exceeds the state income tax credit
4 available to the approved company, then the approved
5 company shall pay the excess to this state as income
6 tax, and if in any tax year during which an agreement
7 is in effect, if the amount of sales tax to be
8 remitted by the approved company exceeds the sales tax
9 credit available to the approved company, then the
10 approved company shall pay the excess to this state as
11 sales tax,

12 c. within forty-five (45) days after the end of each
13 calendar year, the approved company shall supply the
14 Director with such reports and certifications as the
15 Director may request demonstrating to the satisfaction
16 of the Director that the approved company is in
17 compliance with the provisions of the Oklahoma Tourism
18 Development Act, and

19 d. the approved company shall not receive an inducement
20 with respect to any calendar year if:

21 (1) for a tourism attraction project:

22 (a) in any calendar year following the fourth
23 year of the agreement, the tourism

1 attraction project fails to attract at least
2 fifteen percent (15%) of its visitors from
3 among persons who are not residents of this
4 state, or

5 ~~(2)~~

6 (b) in any calendar year following the first
7 year of the agreement, the tourism
8 attraction project is not operating and open
9 to the public on a regular and consistent
10 basis, or

11 (2) for a film or music production and development
12 facility project, in any calendar year following
13 the fourth year of the agreement, the facility
14 fails to have a significant and positive impact
15 on the state.

16 B. The agreement shall not be transferable or assignable by the
17 approved company without the written consent of the Director.

18 C. If the approved company utilizes inducements which are
19 subsequently disallowed, then the approved company will be liable
20 for the payment to the Tax Commission of all taxes resulting from
21 the disallowance of the inducements plus applicable penalties and
22 interest.

1 D. The Director shall provide a copy of each agreement entered
2 into with an approved company to the Tax Commission.

3 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.40, is
4 amended to read as follows:

5 Section 2357.40 A. Upon receiving notification from the
6 Director of the Oklahoma Tourism and Recreation Department that an
7 approved company has entered into a tourism project agreement or a
8 film and music production and development facility project agreement
9 and is entitled to the inducements provided by the Oklahoma Tourism
10 Development Act, the Oklahoma Tax Commission shall provide the
11 approved company with forms and instructions as necessary to claim
12 those inducements.

13 B. An approved company whose agreement provides that it shall
14 expend approved costs of more than Five Hundred Thousand Dollars
15 (\$500,000.00) but less than One Million Dollars (\$1,000,000.00)
16 shall be entitled to an income tax credit or a sales tax credit if
17 the company certifies to the Tax Commission that it has expended at
18 least Five Hundred Thousand Dollars (\$500,000.00) in approved costs,
19 and the Director certifies that the approved company is in
20 compliance with the Oklahoma Tourism Development Act. The Tax
21 Commission shall then issue a tax credit memorandum to the approved
22 company granting an income tax credit or sales tax credit in the
23 amount of ten percent (10%) of the approved costs. Subsequent

1 requests for credit for additional certified approved costs in
2 excess of Five Hundred Thousand Dollars (\$500,000.00) but less than
3 One Million Dollars (\$1,000,000.00) shall result in an income tax
4 credit or sales tax credit in the amount of ten percent (10%) of the
5 approved costs. Income tax credits or sales tax credits allowed
6 pursuant to the provisions of the Oklahoma Tourism Development Act
7 shall not be transferable or assignable.

8 An approved company whose agreement provides that it shall
9 expend approved costs in excess of One Million Dollars
10 (\$1,000,000.00) shall be entitled to an income tax credit or sales
11 tax credit if the company certifies to the Tax Commission that it
12 has expended at least One Million Dollars (\$1,000,000.00) in
13 approved costs and the Director certifies that the approved company
14 is in compliance with the Oklahoma Tourism Development Act. The Tax
15 Commission shall then issue a tax credit memorandum to the approved
16 company granting an income tax credit or sales tax credit in the
17 amount of twenty-five percent (25%) of the approved costs. The
18 credit on all subsequent additional certified approved costs shall
19 be in the amount of twenty-five percent (25%) of the costs.

20 The Tax Commission may require proof of expenditures.
21 Additional credit memoranda may be issued as the approved company
22 certifies additional expenditures of approved costs.

1 No tax credit memorandum shall be issued for any approved costs
2 expended after the expiration of two (2) years from the date the
3 agreement was signed by the Director and the approved company.
4 However, the Director, with the advice and consent of the Tax
5 Commission, may authorize tax credits for approved costs expended up
6 to four (4) years from the date the agreement was signed if the
7 Director determines that the failure to complete the tourism
8 attraction project within two (2) years resulted from:

9 1. Unanticipated and unavoidable delay in the construction of
10 the tourism attraction or film and music production and development
11 facility project;

12 2. An original completion date for the tourism attraction or
13 film and music production and development facility project, as
14 originally planned, which will be more than two (2) years from the
15 date construction began; or

16 3. A change in business ownership or business structure
17 resulting from a merger or acquisition.

18 C. 1. An income tax credit allowed pursuant to the provisions
19 of this section shall be applied to the amount of income taxes due
20 from the approved company. If the amount of an income tax credit
21 allowed pursuant to the provisions of this section exceeds the
22 amount of income taxes due for the year in which the credit is

1 granted, the amount of the credit not used may be carried forward
2 for a period not to exceed ten (10) years.

3 2. A sales tax credit allowed pursuant to the provisions of
4 this section may be used to offset a portion of the reported state
5 sales tax liability of the approved company for all sales tax
6 reporting periods following the issuance of the credit memorandum
7 subject to the following limitations:

- 8 a. only increased state sales tax liability may be offset
9 by the issued credit,
- 10 b. an approved company whose agreement provides that it
11 shall expend approved costs in excess of One Million
12 Dollars (\$1,000,000.00) shall be entitled to use only
13 ten percent (10%) of the amount of each issued credit
14 to offset increased state sales tax liability during
15 each calendar year, plus the amount of any unused
16 credit carried forward from a prior calendar year, and
17 an approved company whose agreement provides that it
18 shall expend approved costs of more than Five Hundred
19 Thousand Dollars (\$500,000.00) but less than One
20 Million Dollars (\$1,000,000.00) shall be entitled to
21 use only twenty percent (20%) of the amount of each
22 issued credit to offset increased state sales tax
23 liability during each calendar year, plus the amount

1 of any unused credit carried forward from a prior
2 calendar year, and

3 c. all issued credit memoranda shall expire at the end of
4 the month following the expiration of the agreement as
5 provided in Section 2357.39 of this title.

6 The approved company shall have no obligation to refund or
7 otherwise return any amount of this credit to the person from whom
8 the sales tax was collected.

9 D. The Tax Commission shall promulgate rules as are necessary
10 for the proper administration of the Oklahoma Tourism Development
11 Act. The Tax Commission may also develop forms and instructions as
12 necessary for an approved company to claim the income tax credit
13 provided by the Oklahoma Tourism Development Act.

14 E. The Tax Commission shall have the authority to obtain any
15 information necessary from the approved company and the Director to
16 verify that approved companies have received the proper amounts of
17 tax credits as authorized by the Oklahoma Tourism Development Act.
18 The Oklahoma Tax Commission shall demand the repayment of any
19 credits taken in excess of the credit allowed by the Oklahoma
20 Tourism Development Act.

21 SECTION 7. This act shall become effective November 1, 2005.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-15-05 - DO PASS,
23 As Coauthored.