

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1921

By: Crain

AS INTRODUCED

An Act relating to revenue and taxation; amending Sections 3, 4, 5 and 8, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2005, Sections 3653, 3654, 3655 and 3658), which relate to the Oklahoma Quality Jobs Incentive Leverage Act, definitions, issuance of obligations, amount of investment and expenditure, and election to transfer incentive payments; modifying definitions; updating references; modifying maximum amount of indebtedness for Oklahoma Development Finance Authority; modifying dates by which certain qualifying expenditures shall be made; modifying dates by which certain interest payments are due; modifying provisions relating to liability for repayment; modifying date by which certain election may be filed; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3653), is amended to read as follows:

Section 3653. As used in this act:

1. "Establishment" means a business that:

- a. has at least One Hundred Fifteen Million Dollars (\$115,000,000.00) in annual gross compensation paid with respect to jobs located in Oklahoma according to Oklahoma Employment Security records and company reports for the three (3) years prior to the irrevocable election filing date provided by Section ~~8 of this act~~ 3658 of this title,
- b. has an average salary of at least Forty Thousand Dollars (\$40,000.00) paid to employees as of the

irrevocable election filing date provided by Section ~~8~~
~~of this act~~ 3658 of this title,

- c. intends to add substantial gross compensation, as defined below, with respect to full-time-equivalent employment located in Oklahoma within three (3) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section ~~8 of this act~~ 3658 of this title,
- d. has at least Two Hundred Million Dollars (\$200,000,000.00) total investment in Oklahoma,
- e. intends to add investment for modernization and retooling of a facility located in the state of at least Fifty Million Dollars (\$50,000,000.00) but for purposes of this act not in excess of Two Hundred Fifty Million Dollars (\$250,000,000.00) within five (5) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section ~~8 of this act~~ 3658 of this title,
- f. has and maintains at least one thousand five hundred fifty (1,550) full-time employees in the state,
- g. is described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification Manual (SIC), latest revision, and
- h. for an establishment qualifying for proceeds pursuant to paragraph 1 of subsection B of Section ~~4 of this act~~ 3654 of this title and, as of the date the irrevocable election authorized by Section ~~8 of this act~~ 3658 of this title is filed, has received or will receive funds as a result of a voter-approved economic development incentive derived from a tax levy:

- (1) by a county or municipality, the population of such county or the population of the county in which such municipality is located shall not exceed five hundred thousand (500,000) persons, according to the most recent federal Decennial Census, and
- (2) with projected revenues for the county or municipality during the period of the tax levy equal to or greater than Five Million Dollars (\$5,000,000.00) as certified by the establishment to the Oklahoma Department of Commerce and an amount committed for the direct benefit of the establishment equal to or greater than thirteen and five-tenths percent (13.5%) of the proceeds from the obligations issued pursuant to Section 4 ~~of this act~~ 3654 of this title to which the establishment is entitled,
 - i. an aerospace product and parts manufacturing business that:
 - (1) has at least Twenty Million Dollars (\$20,000,000.00) in annual gross compensation paid with respect to jobs located in Oklahoma according to Oklahoma Employment Security records and company reports for the three (3) years prior to the irrevocable election filing date provided by Section 3658 of this title,
 - (2) has an average salary of at least Forty Thousand Dollars (\$40,000.00) paid to employees as of the irrevocable election filing date provided by Section 3658 of this title,
 - (3) intends to add substantial gross compensation, capital investment or new technology to the state,

- as defined in paragraph 3 of this section, with respect to full-time-equivalent employment located in Oklahoma within three (3) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section 3658 of this title,
- (4) has at least Fifty Million Dollars (\$50,000,000.00) total investment in Oklahoma,
- (5) intends to add investment for modernization and retooling of a facility located in the state of at least Twenty Million Dollars (\$20,000,000.00) within five (5) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section 3658 of this title,
- (6) has and maintains at least five hundred fifty (550) full-time employees in the state, and
- (7) is described by North American Industry Classification Number 3364.

2. "Gross compensation" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, and benefits paid on behalf of employees receiving wages; and

3. "Substantial gross compensation" means annualized compensation of Four Million Dollars (\$4,000,000.00) or more within three (3) years of filing the irrevocable election with the Oklahoma Department of Commerce pursuant to ~~Section 8 of this act~~ Section 3658 of this title.

SECTION 2. AMENDATORY Section 4, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3654), is amended to read as follows:

Section 3654. A. The Oklahoma Development Finance Authority shall, according to the requirements of the Oklahoma Development

Finance Authority Act, issue obligations in a principal amount determined as required by this section upon certification by the Oklahoma Department of Commerce that an establishment has filed the irrevocable election described in subsection A of Section ~~8 of this act~~ 3658 of this title. No obligation issued by the Oklahoma Development Finance Authority pursuant to this act shall be considered a general obligation of the State of Oklahoma for any purpose and the indebtedness incurred shall be a debt of the Oklahoma Development Finance Authority and not a debt of the State of Oklahoma.

B. Notwithstanding any other provision of this section to the contrary, the total principal amount of indebtedness incurred by the Authority shall not be greater than an amount required for proceeds equal to:

1. Fourteen and four-tenths percent (14.4%) of the maximum amount of projected investment, as disclosed pursuant to Section ~~5 of this act~~ 3655 of this title, for the applicable facility of an establishment that has received or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3653 of this title. The maximum amount of projected investment for purposes of this paragraph shall not exceed Two Hundred Fifty Million Dollars (\$250,000,000.00); or

2. Seven and two-tenths percent (7.2%) of the maximum amount of projected investment, as disclosed pursuant to Section ~~5 of this act~~ 3655 of this title, for the applicable facility of an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3653 of this title; or

3. Sixty Million Dollars (\$60,000,000.00) for the applicable facility of an establishment described by subparagraph i of paragraph 1 of Section 3653 of this title.

C. The proceeds of such issuance shall be used by the Authority for the benefit of an establishment making an irrevocable election pursuant to the requirements of this act and such proceeds shall be made available to an establishment for purposes of making the investments described by ~~Section 3 and Section 5~~ Sections 3653 and 3655 of this act according to the requirements of this act and any agreement executed by the establishment and the Oklahoma Development Finance Authority.

D. Upon receipt and analysis of the disclosures regarding proposed investment for modernization and retooling of a facility located within the state and owned by an establishment that qualifies for access to the proceeds from the sale of the obligations, the Oklahoma Development Finance Authority shall, if requested by the establishment, structure the issuance of the obligations in a manner that provides for the receipt of proceeds equal to the sum of the computations described by paragraphs 1 and 2 of this subsection for an establishment that has received or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3~~ 3653 of this title or the amount prescribed by paragraph ~~3~~ 2 of this subsection for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3653 of this title as follows:

1. The projected value of tax incentives which the establishment has agreed to forego and for which the establishment will become ineligible pursuant to subsections H and I of Section ~~8 of this act~~ 3658 of this title, which amount shall be calculated by the Incentive Approval Committee created by subsection B of Section 3603 of Title 68 of the Oklahoma Statutes according to the following method:

- a. the projected amount of incentive payments to be received by the establishment pursuant to the Oklahoma Quality Jobs Program Act shall be determined,
- b. the projected amount of ad valorem tax liabilities which the establishment will incur as a result of the foregone exemption for a qualifying manufacturing concern that would otherwise be available pursuant to Section 2902 of ~~Title 68 of the Oklahoma Statutes~~ this title shall be determined which shall be calculated using an assumption that the liabilities will be equivalent to one percent (1%) of the amount of the total project cost disclosed to the Oklahoma Development Finance Authority pursuant to Section ~~5 of~~ 3655 of this title,
- c. the projected amount of sales tax liabilities which the establishment will incur as a result of the foregone exemption for the construction of a manufacturing facility that would otherwise be available pursuant to Section 1359 of ~~Title 68 of the Oklahoma Statutes~~ this title shall be determined which shall be calculated using an assumption that the liabilities will be equivalent to four and one-half percent (4 1/2%) of the amount of the portion of project cost disclosed to the Oklahoma Development Finance Authority pursuant to Section ~~5 of this act~~ 3655 of this title that would qualify for the exemption pursuant to Section 1359 of ~~Title 68 of the Oklahoma Statutes~~ this title, and
- d. the sum of the results separately computed pursuant to subparagraphs a, b and c of this paragraph shall be determined for use in the computation of the principal

amount of the issuance as further provided by this subsection; and

2. The projected value of the local economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3~~ ~~of this act~~ 3633 of this title which directly benefits the establishment during the period of the local incentive multiplied by a number that, after accounting for the total computed to paragraph 1 of this subsection, when multiplied by the incentive amount directly benefiting the establishment and added to the result of the computation in paragraph 1 of this subsection is not greater than Thirty-six Million Dollars (\$36,000,000.00), which sum shall be certified to the Oklahoma Development Finance Authority by the Incentive Approval Committee created by subsection B of Section 3603 of ~~Title 68 of the Oklahoma Statutes~~ this title in such form as the Authority may require; or

3. An amount not to exceed seven and two-tenths percent (7.2%) of the project cost as disclosed pursuant to Section ~~5 of this act~~ 3655 of this title which computation shall only be applicable for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3633 of this title which amount shall be certified to the Oklahoma Development Finance Authority by the Incentive Approval Committee created by subsection B of Section 3603 of ~~Title 68 of the Oklahoma Statutes~~ this title in such form as the Authority may require.

E. Upon availability of such proceeds, the Authority shall make payment to the qualified establishment of the full allocation of proceeds based upon the computation required by the applicable paragraphs of subsection D of this section.

F. The obligations authorized by subsection A of this section shall be fully repaid in a period not to exceed twenty (20) years from their issuance.

G. The Oklahoma Development Finance Authority shall require that each and every establishment filing the irrevocable election pursuant to Section ~~8 of this act~~ 3658 of this title will use proceeds derived from the sale of obligations issued pursuant to subsection A of this section according to the requirements of this act.

H. An establishment that otherwise qualifies to use proceeds from the sale of obligations pursuant to this section shall be required to provide documentation to the Oklahoma Development Finance Authority that a minimum of Fifty Million Dollars (\$50,000,000.00) has been expended or legally committed for expenditure for a modernization and retooling of an existing facility located within the state before the Authority is authorized to transfer any such proceeds to the establishment. Such expenditure or commitment for expenditures for the modernization and retooling of an existing facility occurring at any time on or after ~~January 1, 2001~~ January 1, 2006, but not later than ~~January 1, 2003~~ January 1, 2008, shall qualify in satisfaction of this requirement.

I. Subject to the requirements of this section, the Oklahoma Development Finance Authority is authorized to issue its obligations in the principal amount required in order to make the proceeds from the sale of its obligations available to each establishment that qualifies for the use of such proceeds as required by this section, and in such additional principal amount as may be required for the payment of interest or the payment of principal and interest for the fiscal year ending ~~June 30, 2003~~ June 30, 2008, together with such additional principal amount that may be required or that may be associated with the costs of the issuance of the obligations. Under no circumstances shall the amount of proceeds derived from the sale of obligations authorized by subsection A of this section and which are made available to a qualified establishment exceed the amount prescribed by this section.

J. The Oklahoma Development Finance Authority shall provide that the first payment of interest or the first payment of principal and interest in repayment of the obligations authorized by subsection A of this section shall not become due until ~~July 1, 2003~~ July 1, 2008, or thereafter, if feasible, or the Authority shall provide for the first payment of interest or the first payment of principal and interest using some portion of the proceeds derived from the sale of obligations authorized by subsection A of this section. If any payment of principal or interest is due at any time after ~~July 1, 2003~~ July 1, 2008, the Authority may use such proceeds with respect to such required payment. In no case shall the Authority issue the obligations in any manner that requires the use of revenues apportioned to the Quality Jobs Program Incentive Leverage Fund pursuant to Section ~~9 of this act~~ 3659 of this title until ~~July 1, 2003~~ July 1, 2008, or thereafter.

K. The Oklahoma Development Finance authority may enter into such agreements with a qualified establishment as are necessary to implement the provisions of this act. The Authority shall require that an establishment using proceeds from obligations issued pursuant to this section enter into a contract with the Authority reflecting the benefits derived by the State of Oklahoma in a manner consistent with the findings of Section ~~2 of this act~~ 3652 of this title. The Authority may provide for the issuance of obligations in a manner that results in availability of proceeds suitable to the proposed investment activity of an establishment and which takes into account the obligation of the Authority to repay principal and interest with the objective of obtaining the most favorable financing terms to the Authority for the repayment of the obligations.

L. If an establishment to which proceeds from the sale of obligations issued pursuant to subsection A of this section are transferred does not make use of the proceeds in the amount required

by any agreement with the Authority or in contravention of any of the terms or requirements imposed by the Authority or by the requirements of this act, the establishment shall become liable to the Oklahoma Development Finance Authority for the payment of principal, interest or other costs associated with the repayment of any amount of debt represented by obligations issued pursuant to subsection A of this section to the extent such proceeds were paid to the establishment and such proceeds were not used in the amount disclosed to the Oklahoma Development Finance Authority pursuant to ~~Section 5 of this act~~ 3655 of this title. If an establishment does not make the full amount of investment as disclosed pursuant to ~~Section 5 of this act~~ 3655 of this title, the establishment shall be liable for principal, interest or other costs associated with repayment of debt equal to the difference between the amount of investment disclosed pursuant to ~~Section 5 of this act~~ 3655 of this title and the actual investment made by the establishment multiplied by fourteen and four-tenths percent (14.4%) for an establishment that has or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3653 of this title or multiplied by seven and two-tenths percent (7.2%) for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section ~~3 of this act~~ 3653 of this title or Sixty Million Dollars (\$60,000,000.00) for an establishment as described by subparagraph (i) of Section 3563 of this title.

M. An establishment that otherwise qualifies for the use of proceeds derived from the sale of obligations pursuant to subsection A of this section shall execute and deliver to the Oklahoma Development Finance Authority a guaranty, or shall cause a guaranty to be executed and delivered by a third party, in such form as the Authority may determine, for the benefit of the Oklahoma Development

Finance Authority in the event of a deficit between the sum of the incentive payment and the withholding taxes transferred to the Quality Jobs Program Incentive Leverage Fund pursuant to Section ~~9 of this act~~ 3659 of this title and the total amount required for the payment of principal, interest or other costs associated with the obligations, proceeds from the sale of which are paid to the establishment or are available for use by the establishment. The Authority shall only accept a third-party guaranty from an entity that has a net worth in excess of the net worth of the establishment on behalf of which the guaranty is provided. Payments received by the Oklahoma Development Finance Authority pursuant to the provisions of this subsection and pursuant to the terms of the guaranty shall be deposited into the Quality Jobs Program Incentive Leverage Fund. The Oklahoma Development Finance Authority shall require that the guaranty provide for such terms of payment as may be required to make payments of principal, interest or other costs in a timely manner to the entity or entities to which the Authority is obligated to make payment. No revenues authorized to be apportioned pursuant to Section 2352 of ~~Title 68 of the Oklahoma Statutes~~ this title shall be transferred to the Quality Jobs Program Incentive Leverage Fund until the terms of the guaranty have been invoked and payment received or until the Oklahoma Development Finance Authority determines an event of default under the terms of the guaranty.

N. The Oklahoma Development Finance Authority, in addition to any other powers granted to it pursuant to the Oklahoma Development Finance Authority Act, may pursue such remedies for the collection of any debt owed to the Authority as authorized by this section as are available to any creditor under the laws of the State of Oklahoma.

O. The provisions of the Oklahoma Development Finance Authority Act shall be fully applicable to the obligations issued pursuant to

subsection A of this section and except insofar as the provisions of this act are inconsistent with the provisions of the Oklahoma Development Finance Authority Act, the Oklahoma Quality Jobs Incentive Leverage Act shall supercede and govern all entities, transactions, obligations, rights and remedies associated with such obligations.

SECTION 3. AMENDATORY Section 5, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3655), is amended to read as follows:

Section 3655. A. Within sixty (60) days after filing the irrevocable election pursuant to Section ~~8 of this act~~ 3658 of this title, each establishment that has filed such election shall provide to the Oklahoma Development Finance Authority, on such form as may be prescribed by the Authority for this purpose, the total amount of investment and expenditure proposed by the establishment for the modernization or retooling of a facility located within the state owned by the establishment. The full amount of expenditures qualifying for the use of proceeds pursuant to Section ~~4 of this act~~ 3654 of this title shall be made not later than five (5) years from the date as of which the disclosure document required by this subsection is filed.

B. The Oklahoma Development Finance Authority shall evaluate the information provided pursuant to subsection A of this section in order to determine the total principal amount of the issuance or issuances authorized by subsection A of Section ~~4 of this act~~ 3654 of this title. The total principal amount of any indebtedness issued by the Authority shall not exceed an amount required in order to allow all establishments that have made the disclosure required by subsection A of this section to fully expend proceeds made available to the establishment by the Authority, plus amounts required for repayment of the obligations, if applicable, and the costs of the issuance.

SECTION 4. AMENDATORY Section 8, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3658), is amended to read as follows:

Section 3658. A. An establishment, as defined in Section ~~3~~ of ~~this act~~ 3653 of this title, which is otherwise authorized to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act and that is in receipt of incentive payments or has qualified for receipt of incentive payments as of the date of the irrevocable election and that intends to use proceeds derived from the sale of obligations issued pursuant to Section ~~4~~ of ~~this act~~ 3654 of this title shall, as a condition of being eligible to make use of such proceeds, file an irrevocable election with the Oklahoma Department of Commerce to have such incentive payments which would otherwise be paid to the establishment transferred to the Quality Jobs Program Incentive Leverage Fund. An establishment shall file its election with the Oklahoma Department of Commerce not later than ~~August 1, 2003~~ August 1, 2007, in order to be eligible for use of any proceeds from the sale of obligations authorized by Section ~~4~~ of ~~this act~~ 3654 of this title. No establishment that is not in receipt of or that has not qualified for receipt of incentive payments pursuant to the Quality Jobs Program Act may file an election pursuant to this section.

B. Upon filing such election, any incentive payments which would have been paid to the establishment pursuant to the Oklahoma Quality Jobs Program Act after such filing shall be deposited to the Quality Jobs Program Incentive Leverage Fund. Such incentive payments shall be treated as an asset of the establishment which has been paid to the State of Oklahoma for purposes of this act.

C. Beginning July 1, 2003, and for each fiscal year thereafter as otherwise required by this act, monies transferred to the Quality Jobs Program Incentive Leverage Fund shall be used for the payment of principal and interest or other costs associated with the

issuance of obligations by the Oklahoma Development Finance Authority pursuant to the provisions of Section ~~4 of this act~~ 3654 of this title. Not later than January 1 and July 1 of each year, the Oklahoma Development Finance Authority shall certify to the Oklahoma Department of Commerce and the Oklahoma Tax Commission the amount which will be required for payment of principal, interest and other costs associated with the issuance of such obligations for the succeeding six-month period.

D. Notwithstanding any provision of law to the contrary, once an irrevocable election has been made by the establishment pursuant to the provisions of this section:

1. The incentive payment made pursuant to the Oklahoma Quality Jobs Program Act for the establishment shall never be less than One Dollar (\$1.00) either during the period of the contract for the incentive payment or during the period of time obligations issued under Section ~~4 of this act~~ 3654 of this title remain unpaid; and

2. Incentive payments shall continue to be paid for the establishment either as provided in the contract for incentive payments in the amount required by the Quality Jobs Program Act or in the amount of One Dollar (\$1.00) after the expiration of the contract period until the Oklahoma Development Finance Authority certifies to the Oklahoma Department of Commerce and the Tax Commission that the indebtedness of the Authority issued pursuant to the provisions of Section ~~4 of this act~~ 3654 of this title has been repaid.

E. Beginning July 1, 2003, and for each fiscal year thereafter as otherwise required by this act, as often as may be necessary for the Oklahoma Development Finance Authority to make payments with respect to indebtedness issued pursuant to the provisions of this act, the Tax Commission shall transfer from the revenues specified in Section ~~4 of this act~~ 3659 of this title an amount required to equal the difference between the incentive payment deposit and the

amount certified pursuant to the provisions of subsection C of this section. The Tax Commission shall then transfer the total amount required pursuant to the certification to the Oklahoma Development Finance Authority.

F. An establishment to which proceeds from the sale of any obligations issued by the Oklahoma Development Finance Authority are made available as provided by this act shall not claim any tax credits that would otherwise be authorized pursuant to Section 2357.4 of ~~Title 68 of the Oklahoma Statutes~~ this title as a result of jobs created or capital investment made as a direct result of the use of such bond proceeds. For purposes of this subsection and for purposes of computing any tax credit pursuant to Section 2357.4 of ~~Title 68 of the Oklahoma Statutes~~ this title, "bond proceeds" shall mean the amount transferred, paid or made available to the establishment together with the total amount of principal and interest paid by the Oklahoma Development Finance Authority with respect to any amount of proceeds transferred, paid or made available to the establishment.

G. An establishment that files an irrevocable election authorized by this section and to which proceeds from the sale of obligations authorized by Section ~~4 of this act~~ 3654 of this title are paid or made available may utilize income tax credits earned prior to the effective date of this act pursuant to Section 2357.4 of ~~Title 68 of the Oklahoma Statutes~~ this title for a period of fifteen (15) taxable years subsequent to the year in which the election is filed.

H. An establishment that files an irrevocable election authorized by this section and to which any proceeds from the sale of obligations authorized by Section ~~4 of this act~~ 3654 of this title are paid or made available shall not be eligible to claim any exemption pursuant to Section 6B of Article X of the Oklahoma Constitution or Section 2902 of ~~Title 68 of the Oklahoma Statutes~~

this title with respect to real or personal property constituting the facility described by the establishment pursuant to the disclosure document as provided by Section ~~5 of this act~~ 3655 of this title. The maximum amount of investment in any facility for purposes of the foregone exemption required by this subsection shall be Two Hundred Fifty Million Dollars (\$250,000,000.00).

I. An establishment that files an irrevocable election authorized by this section and to which any proceeds from the sale of obligations authorized by Section ~~4 of this act~~ 3654 of this title are paid or made available shall not be eligible to claim any exemption otherwise available pursuant to Section 1359 of ~~Title 68 of the Oklahoma Statutes~~ this title with respect to the facility constructed, acquired, improved or equipped with such proceeds. The provisions of this subsection shall not require any waiver of sales tax exemption with respect to personal property acquired for the manufacturing process after completion of construction of the applicable facility.

SECTION 5. This act shall become effective November 1, 2006.

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