

1 ENGROSSED HOUSE AMENDMENT
TO

2 ENGROSSED SENATE BILL NO. 1891

By: Bass and Barrington of
the Senate

3
4 and

5 Shannon and Dorman of the
6 House

7
8 (revenue and taxation - Oklahoma Quality Jobs
9 Incentive Leverage Act - allowing second election -
10 effective date)

11
12
13 AUTHORS: Add the following House Coauthors: Armes and Coody

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
15 entire bill and insert

16 "An Act relating to revenue and taxation; amending
17 Sections 2, 3 and 4, Chapter 299, O.S.L. 2002,
18 Section 5, Chapter 299, O.S.L. 2002, as amended by
19 Section 1, Chapter 349, O.S.L. 2007, and Sections 6,
20 7, 8, 9 and 10, Chapter 299, O.S.L. 2002 (68 O.S.
21 Supp. 2007, Sections 3652, 3653, 3654, 3655, 3656,
22 3657, 3658, 3659 and 3660), which relate to the
23 Oklahoma Quality Jobs Incentive Leverage Act;
24 modifying legislative intent statement; modifying
definitions; prohibiting issuance of certain
additional obligations by Oklahoma Development
Finance Authority; providing exception; modifying
provisions related to computation of authorized
issuance by Oklahoma Development Finance Authority;
providing for second irrevocable election; modifying
requirement related to certain expenditure
commitment; modifying provisions related to payment

1 of principal or interest for certain obligations
2 issued by Oklahoma Development Finance Authority;
3 modifying provisions governing certain disclosure
4 document and proposed investment amounts; modifying
5 procedures related to Quality Jobs Program Incentive
6 Leverage Fund; modifying procedures related to
7 filing of irrevocable elections; prescribing
8 procedures related to second irrevocable election
9 filing process; providing for effect of election
10 upon certain time limitation; modifying provisions
11 related to certain incentive payments; modifying
12 provisions related to transfer of certain
13 withholding tax revenues with respect to certain
14 obligations; providing for continued transfer of
15 certain revenues; modifying statutory references;
16 and providing an effective date.

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

18 SECTION 1. AMENDATORY Section 2, Chapter 299, O.S.L.
19 2002 (68 O.S. Supp. 2007, Section 3652), is amended to read as
20 follows:

21 Section 3652. The Legislature finds that certain establishments
22 which ~~qualify~~ have, previous to the effective date of this act,
23 qualified for incentive payments pursuant to the Oklahoma Quality
24 Jobs Program Act are a source of economic benefits for the state,
its political subdivisions and its residents that can only be
achieved through the use of specialized economic incentives. The
Oklahoma Quality Jobs Incentive Leverage Act is enacted in order to
provide a mechanism for the leverage of incentive payments for the
purpose of promoting and sustaining economic growth and activity
within the State of Oklahoma. The Legislature finds that the use of

1 the incentive payment, together with other fiscal resources, is a
2 method that provides a beneficial correlation between the use of
3 monies in the Quality Jobs Program Incentive Leverage Fund and the
4 total economic benefits to be derived from the use of proceeds from
5 the sale of obligations provided by Section 4 3654 of this ~~act~~
6 title.

7 SECTION 2. AMENDATORY Section 3, Chapter 299, O.S.L.
8 2002 (68 O.S. Supp. 2007, Section 3653), is amended to read as
9 follows:

10 Section 3653. As used in this act:

11 1. "Establishment" means a business that:

12 a. has at least One Hundred Fifteen Million Dollars
13 (\$115,000,000.00) in annual gross compensation paid
14 with respect to jobs located in Oklahoma according to
15 Oklahoma Employment Security records and company
16 reports for the three (3) years prior to the
17 irrevocable election filing date provided by Section ~~§~~
18 3658 of this ~~act~~ title,

19 b. has an average salary of at least Forty Thousand
20 Dollars (\$40,000.00) paid to employees as of the
21 irrevocable election filing date provided by Section ~~§~~
22 3658 of this ~~act~~ title,

23 c. intends to add substantial gross compensation, as
24 defined below, with respect to full-time-equivalent

1 employment located in Oklahoma within three (3) years
2 of filing an initial irrevocable election with the
3 Oklahoma Department of Commerce pursuant to the
4 provisions of subsection A of Section § 3658 of this
5 ~~act~~ title,

6 d. has at least Two Hundred Million Dollars

7 (\$200,000,000.00) total investment in Oklahoma,

8 e. intends to add investment for additional modernization

9 and retooling of a facility located in the state, on

10 or after the effective date of this act, of at least

11 ~~Fifty Million Dollars (\$50,000,000.00)~~ One Hundred

12 Million Dollars (\$100,000,000.00), but for purposes of

13 this act not in excess of an additional Two Hundred

14 Fifty Million Dollars (\$250,000,000.00) within five

15 (5) years of filing ~~an~~ a second irrevocable election

16 with the Oklahoma Department of Commerce pursuant to

17 the provisions of subsection A of Section § 3658 of

18 this ~~act~~ title, unless the establishment has completed

19 at least eighty percent (80%) of the expenditures for

20 the additional investment by the end of the five-year

21 period in which case the establishment shall be

22 allowed a one-year extension for completion of the

23 investment,

24

1 f. for purposes of an initial irrevocable election filed
2 prior to the effective date of this act, has and
3 maintains at least one thousand five hundred fifty
4 (1,550) full-time employees in the state, and

5 g. is described by Industry Number 3011, Industry Group
6 Number 301, Major Group 30 of the Standard Industrial
7 Classification Manual (SIC), latest revision, ~~and~~

8 ~~h. for an establishment qualifying for proceeds pursuant~~
9 ~~to paragraph 1 of subsection B of Section 4 of this~~
10 ~~act and, as of the date the irrevocable election~~
11 ~~authorized by Section 8 of this act is filed, has~~
12 ~~received or will receive funds as a result of a voter~~
13 ~~approved economic development incentive derived from a~~
14 ~~tax levy:~~

15 ~~(1) by a county or municipality, the population of~~
16 ~~such county or the population of the county in~~
17 ~~which such municipality is located shall not~~
18 ~~exceed five hundred thousand (500,000) persons,~~
19 ~~according to the most recent federal Decennial~~
20 ~~Census, and~~

21 ~~(2) with projected revenues for the county or~~
22 ~~municipality during the period of the tax levy~~
23 ~~equal to or greater than Five Million Dollars~~
24 ~~(\$5,000,000.00) as certified by the establishment~~

1 ~~to the Oklahoma Department of Commerce and an~~
2 ~~amount committed for the direct benefit of the~~
3 ~~establishment equal to or greater than thirteen~~
4 ~~and five tenths percent (13.5%) of the proceeds~~
5 ~~from the obligations issued pursuant to Section 4~~
6 ~~of this act to which the establishment is~~
7 ~~entitled;~~

8 2. "Gross compensation" means wages, as defined in Section
9 2385.1 of Title 68 of the Oklahoma Statutes, and benefits paid on
10 behalf of employees receiving wages; and

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

16 SECTION 3. AMENDATORY Section 4, Chapter 299, O.S.L.
17 2002 (68 O.S. Supp. 2007, Section 3654), is amended to read as
18 follows:

19 Section 3654. A. The Oklahoma Development Finance Authority
20 shall, according to the requirements of the Oklahoma Development
21 Finance Authority Act, issue obligations in a principal amount
22 determined as required by this section upon certification by the
23 Oklahoma Department of Commerce that an establishment has filed the
24 second irrevocable election described in subsection A of Section &

1 3658 of this act title. The Authority shall not issue any
2 additional obligations as a result of a second irrevocable election
3 authorized by Section 3658 of this title until any obligations
4 issued by the Authority prior to the effective date of this act have
5 been fully defeased. No obligation issued by the Oklahoma
6 Development Finance Authority pursuant to this act shall be
7 considered a general obligation of the State of Oklahoma for any
8 purpose and the indebtedness incurred shall be a debt of the
9 Oklahoma Development Finance Authority and not a debt of the State
10 of Oklahoma.

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

15 ~~1. Fourteen fourteen and four-tenths percent (14.4%) of the~~
16 ~~maximum amount of projected additional investment, as disclosed~~
17 ~~pursuant to Section ~~5~~ 3655 of this ~~act~~ title, for the applicable~~
18 ~~facility of an establishment ~~that has received or will receive funds~~~~
19 ~~as a result of a voter approved economic development incentive as~~
20 ~~described by subparagraph h of paragraph 1 of Section 3 of this act~~
21 as defined by Section 3653 of this title. The maximum amount of
22 projected additional investment for purposes of this ~~paragraph~~
23 subsection shall not exceed Two Hundred Fifty Million Dollars
24 (\$250,000,000.00); ~~or~~

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

7 C. The proceeds of such issuance shall be used by the Authority
8 for the benefit of an establishment making ~~an~~ a second irrevocable
9 election pursuant to the requirements of this act and such proceeds
10 shall be made available to an establishment for purposes of making
11 the investments described by Section ~~3~~ 3653 and Section ~~5~~ 3655 of
12 this ~~act~~ title according to the requirements of this act and any
13 agreement executed by the establishment and the Oklahoma Development
14 Finance Authority.

15 D. Upon receipt and analysis of the disclosures regarding
16 proposed investment for additional modernization and retooling of a
17 facility located within the state and owned by an establishment that
18 qualifies for access to the proceeds from the sale of the
19 obligations, the Oklahoma Development Finance Authority shall, if
20 requested by the establishment, structure the issuance of the
21 obligations in a manner that provides for the receipt of proceeds
22 equal to ~~the sum of the computations described by paragraphs 1 and 2~~
23 ~~of this subsection for an establishment that has received or will~~
24 ~~receive funds as a result of a voter approved economic development~~

1 ~~incentive as described by subparagraph h of paragraph 1 of Section 3~~
2 ~~of this act or the amount prescribed by paragraph 3 of this~~
3 ~~subsection for an establishment that will not receive funds as a~~
4 ~~result of a voter approved economic development incentive as~~
5 ~~described by subparagraph h of paragraph 1 of Section 3 of this act~~
6 ~~as follows:~~

7 1. ~~The projected value of tax incentives which the~~
8 ~~establishment has agreed to forego and for which the establishment~~
9 ~~will become ineligible pursuant to subsections H and I of Section 8~~
10 ~~of this act, which amount shall be calculated by the Incentive~~
11 ~~Approval Committee created by subsection B of Section 3603 of Title~~
12 ~~68 of the Oklahoma Statutes according to the following method:~~

- 13 a. ~~the projected amount of incentive payments to be~~
14 ~~received by the establishment pursuant to the Oklahoma~~
15 ~~Quality Jobs Program Act shall be determined,~~
- 16 b. ~~the projected amount of ad valorem tax liabilities~~
17 ~~which the establishment will incur as a result of the~~
18 ~~foregone exemption for a qualifying manufacturing~~
19 ~~concern that would otherwise be available pursuant to~~
20 ~~Section 2902 of Title 68 of the Oklahoma Statutes~~
21 ~~shall be determined which shall be calculated using an~~
22 ~~assumption that the liabilities will be equivalent to~~
23 ~~one percent (1%) of the amount of the total project~~

24

1 ~~cost disclosed to the Oklahoma Development Finance~~
2 ~~Authority pursuant to Section 5 of this act,~~
3 ~~c. the projected amount of sales tax liabilities which~~
4 ~~the establishment will incur as a result of the~~
5 ~~foregone exemption for the construction of a~~
6 ~~manufacturing facility that would otherwise be~~
7 ~~available pursuant to Section 1359 of Title 68 of the~~
8 ~~Oklahoma Statutes shall be determined which shall be~~
9 ~~calculated using an assumption that the liabilities~~
10 ~~will be equivalent to four and one half percent (4~~
11 ~~1/2%) of the amount of the portion of project cost~~
12 ~~disclosed to the Oklahoma Development Finance~~
13 ~~Authority pursuant to Section 5 of this act that would~~
14 ~~qualify for the exemption pursuant to Section 1359 of~~
15 ~~Title 68 of the Oklahoma Statutes, and~~
16 ~~d. the sum of the results separately computed pursuant to~~
17 ~~subparagraphs a, b and c of this paragraph shall be~~
18 ~~determined for use in the computation of the principal~~
19 ~~amount of the issuance as further provided by this~~
20 ~~subsection, and~~

21 ~~2. The projected value of the local economic development~~
22 ~~incentive as described by subparagraph h of paragraph 1 of Section 3~~
23 ~~of this act which directly benefits the establishment during the~~
24 ~~period of the local incentive multiplied by a number that, after~~

1 ~~accounting for the total computed to paragraph 1 of this subsection,~~
2 ~~when multiplied by the incentive amount directly benefiting the~~
3 ~~establishment and added to the result of the computation in~~
4 ~~paragraph 1 of this subsection is not greater than Thirty six~~
5 ~~Million Dollars (\$36,000,000.00), which sum shall be certified to~~
6 ~~the Oklahoma Development Finance Authority by the Incentive Approval~~
7 ~~Committee created by subsection B of Section 3603 of Title 68 of the~~
8 ~~Oklahoma Statutes in such form as the Authority may require; or~~

9 ~~3. An amount not to exceed seven and two tenths percent (7.2%)~~
10 ~~of the project cost as disclosed pursuant to Section 5 of this act~~
11 ~~which computation shall only be applicable for an establishment that~~
12 ~~will not receive funds as a result of a voter approved economic~~
13 ~~development incentive as described by subparagraph h of paragraph 1~~
14 ~~of Section 3 of this act which amount shall be certified to the~~
15 ~~Oklahoma Development Finance Authority by the Incentive Approval~~
16 ~~Committee created by subsection B of Section 3603 of Title 68 of the~~
17 ~~Oklahoma Statutes in such form as the Authority may require fourteen~~
18 ~~and four-tenths percent (14.4%) of the amount of additional~~
19 ~~investment disclosed pursuant to the provisions of Section 3655 of~~
20 ~~this title.~~

21 E. Upon availability of such proceeds, the Authority shall make
22 payment to the qualified establishment of the full allocation of
23 proceeds from a second or subsequent issuance of obligations based
24

1 upon the computation required by ~~the applicable paragraphs of~~
2 subsection D of this section.

3 F. The obligations authorized by subsection A of this section,
4 whether issued prior to or on or after the effective date of this
5 act, shall be fully repaid in a period not to exceed twenty (20)
6 years from their issuance.

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

13 H. An establishment that otherwise qualifies to use proceeds
14 from the sale of obligations pursuant to this section shall be
15 required to provide documentation to the Oklahoma Development
16 Finance Authority that, prior to the effective date of this act, a
17 minimum of Fifty Million Dollars (\$50,000,000.00) has been expended
18 or legally committed for expenditure for a modernization and
19 retooling of an existing facility located within the state before
20 the Authority is authorized to transfer any such proceeds to the
21 establishment. ~~Such expenditure or commitment for expenditures for~~
22 ~~the modernization and retooling of an existing facility occurring at~~
23 ~~any time on or after January 1, 2001, but not later than January 1,~~
24 ~~2003, shall qualify in satisfaction of this requirement.~~

1 I. Subject to the requirements of this section, the Oklahoma
2 Development Finance Authority is authorized to issue its obligations
3 in the principal amount required in order to make the proceeds from
4 the sale of its obligations available to each establishment that
5 qualifies for the use of such proceeds as required by this section,
6 and in such additional principal amount as may be required for the
7 payment of interest or the payment of principal and interest for the
8 fiscal year ending June 30, ~~2003~~ 2010, or subsequent fiscal year,
9 together with such additional principal amount that may be required
10 or that may be associated with the costs of the issuance of the
11 obligations. Under no circumstances shall the amount of proceeds
12 derived from the sale of obligations authorized by subsection A of
13 this section and which are made available to a qualified
14 establishment exceed the amount prescribed by this section.

15 J. The Oklahoma Development Finance Authority shall provide
16 that the first payment of interest or the first payment of principal
17 and interest in repayment of the obligations authorized by
18 subsection A of this section as a result of a second irrevocable
19 election shall not become due until the later of July 1, ~~2003~~ 2009,
20 or thereafter the first date upon which the revenues payable to the
21 Authority from the Quality Jobs Program Incentive Leverage Fund are
22 no longer committed to the payment of debt service requirements and
23 related costs in connection with obligations issued by the Authority
24 pursuant to the Quality Jobs Program Incentive Leverage Act prior to

1 the effective date of this act, if feasible, or the Authority shall
2 provide for the first payment of interest or the first payment of
3 principal and interest using some portion of the proceeds derived
4 from the sale of obligations authorized by subsection A of this
5 section. If any payment of principal or interest with respect to
6 obligations issued on or after the effective date of this act is due
7 at any time after July 1, ~~2003~~ 2009, the Authority may use such
8 proceeds with respect to such required payment. ~~In~~ With respect to
9 obligations issued by the Authority as a result of a second
10 irrevocable election, in no case shall the Authority issue the
11 obligations in any manner that requires the use of revenues
12 apportioned to the Quality Jobs Program Incentive Leverage Fund
13 pursuant to Section ~~9~~ 3659 of this act until July 1, ~~2003~~ 2009, or
14 thereafter.

15 K. The Oklahoma Development Finance authority may enter into
16 such agreements with a qualified establishment as are necessary to
17 implement the provisions of this act. The Authority shall require
18 that an establishment using proceeds from obligations issued
19 pursuant to this section as a result of a second irrevocable
20 election enter into a contract with the Authority reflecting the
21 benefits derived by the State of Oklahoma in a manner consistent
22 with the findings of Section ~~2~~ 3652 of this ~~act~~ title. The
23 Authority may provide for the issuance of obligations in a manner
24 that results in availability of proceeds suitable to the proposed

1 additional investment activity of an establishment and which takes
2 into account the obligation of the Authority to repay principal and
3 interest with the objective of obtaining the most favorable
4 financing terms to the Authority for the repayment of the
5 obligations.

6 L. If an establishment to which proceeds from the sale of
7 obligations issued pursuant to subsection A of this section as a
8 result of a second irrevocable election are transferred does not
9 make use of the proceeds in the amount required by any agreement
10 with the Authority or in contravention of any of the terms or
11 requirements imposed by the Authority or by the requirements of this
12 act, the establishment shall become liable to the Oklahoma
13 Development Finance Authority for the payment of principal, interest
14 or other costs associated with the repayment of any amount of debt
15 represented by obligations issued pursuant to subsection A of this
16 section resulting from a second irrevocable election to the extent
17 such proceeds were paid to the establishment and such proceeds were
18 not used in the amount disclosed to the Oklahoma Development Finance
19 Authority pursuant to Section ~~5~~ 3655 of this ~~act~~ title. If an
20 establishment does not make the full amount of additional investment
21 as disclosed pursuant to Section ~~5~~ 3655 of this ~~act~~ title, the
22 establishment shall be liable for principal, interest or other costs
23 associated with repayment of debt equal to the difference between
24 the amount of investment disclosed pursuant to Section ~~5~~ 3655 of

1 this ~~act~~ title and the actual investment made by the establishment
2 multiplied by fourteen and four-tenths percent (14.4%) ~~for an~~
3 ~~establishment that has or will receive funds as a result of a voter-~~
4 ~~approved economic development incentive as described by subparagraph~~
5 ~~h of paragraph 1 of Section 3 of this act or multiplied by seven and~~
6 ~~two tenths percent (7.2%) for an establishment that will not receive~~
7 ~~funds as a result of a voter approved economic development incentive~~
8 ~~as described by subparagraph h of paragraph 1 of Section 3 of this~~
9 ~~act.~~

10 M. An establishment that otherwise qualifies for the use of
11 proceeds derived from the sale of obligations pursuant to subsection
12 A of this section resulting from a second irrevocable election shall
13 execute and deliver to the Oklahoma Development Finance Authority a
14 guaranty, or shall cause a guaranty to be executed and delivered by
15 a third party, in such form as the Authority may determine, for the
16 benefit of the Oklahoma Development Finance Authority in the event
17 of a deficit between the sum of the incentive payment and the
18 withholding taxes transferred to the Quality Jobs Program Incentive
19 Leverage Fund pursuant to Section ~~9~~ 3659 of this ~~act~~ title and the
20 total amount required for the payment of principal, interest or
21 other costs associated with the obligations, proceeds from the sale
22 of which are paid to the establishment or are available for use by
23 the establishment. The Authority shall only accept a third-party
24 guaranty from an entity that has a net worth in excess of the net

1 | worth of the establishment on behalf of which the guaranty is
2 | provided. Payments received by the Oklahoma Development Finance
3 | Authority pursuant to the provisions of this subsection and pursuant
4 | to the terms of the guaranty shall be deposited into the Quality
5 | Jobs Program Incentive Leverage Fund. The Oklahoma Development
6 | Finance Authority shall require that the guaranty provide for such
7 | terms of payment as may be required to make payments of principal,
8 | interest or other costs in a timely manner to the entity or entities
9 | to which the Authority is obligated to make payment. No revenues
10 | authorized to be apportioned pursuant to Section 2352 of Title 68 of
11 | the Oklahoma Statutes shall be transferred to the Quality Jobs
12 | Program Incentive Leverage Fund until the terms of the guaranty have
13 | been invoked and payment received or until the Oklahoma Development
14 | Finance Authority determines an event of default under the terms of
15 | the guaranty.

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

22 | O. The provisions of the Oklahoma Development Finance Authority
23 | Act shall be fully applicable to the obligations issued pursuant to
24 | subsection A of this section and except insofar as the provisions of

1 this act are inconsistent with the provisions of the Oklahoma
2 Development Finance Authority Act, the Oklahoma Quality Jobs
3 Incentive Leverage Act shall supercede and govern all entities,
4 transactions, obligations, rights and remedies associated with such
5 obligations.

6 SECTION 4. AMENDATORY Section 5, Chapter 299, O.S.L.
7 2002, as amended by Section 1, Chapter 349, O.S.L. 2007 (68 O.S.
8 Supp. 2007, Section 3655), is amended to read as follows:

9 Section 3655. A. Within sixty (60) days after filing the
10 second irrevocable election pursuant to Section 3658 of this title,
11 each establishment that has filed such election shall provide to the
12 Oklahoma Development Finance Authority, on such form as may be
13 prescribed by the Authority for this purpose, the total amount of
14 additional investment and expenditure proposed by the establishment
15 for the additional modernization or retooling of a facility located
16 within the state owned by the establishment. The full amount of
17 expenditures qualifying for the use of proceeds pursuant to Section
18 3654 of this title shall be made not later than five (5) years from
19 the date as of which the disclosure document required by this
20 subsection is filed, except as such period may be extended pursuant
21 to subparagraph e of paragraph 1 of Section 3653 of this title;
22 provided, such five-year-time period may be extended one time, for a
23 period not to exceed twelve (12) months, by the Oklahoma Department
24 of Commerce if the establishment makes a request for an extension

1 and provides the Department with a schedule of intended investment
2 and expenditure.

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

13 SECTION 5. AMENDATORY Section 6, Chapter 299, O.S.L.
14 2002 (68 O.S. Supp. 2007, Section 3656), is amended to read as
15 follows:

16 Section 3656. A. The Oklahoma Development Finance Authority
17 may use the Credit Enhancement Reserve Fund in order to obtain
18 favorable financing terms for the issuance of obligations authorized
19 by Section 4 3654 of this ~~act~~ title. The commitment from the Credit
20 Enhancement Reserve Fund for any such obligations shall not exceed
21 Ten Million Dollars (\$10,000,000.00).

22 B. For purposes of the issuance authorized by Section 4 3654 of
23 this ~~act~~ title, the provisions of Section 5063.4c of Title 74 of the
24 Oklahoma Statutes shall not be applicable.

1 SECTION 6. AMENDATORY Section 7, Chapter 299, O.S.L.
2 2002 (68 O.S. Supp. 2007, Section 3657), is amended to read as
3 follows:

4 Section 3657. There is hereby created within the State Treasury
5 a special fund for the Oklahoma Development Finance Authority to be
6 designated the "Quality Jobs Program Incentive Leverage Fund". All
7 amounts deposited into the fund shall be used and expended by the
8 Oklahoma Development Finance Authority solely for the purposes and
9 in the amounts authorized by the Oklahoma Quality Jobs Incentive
10 Leverage Act. The Oklahoma Development Finance Authority is hereby
11 specifically authorized and directed to use the monies transferred
12 from the Quality Jobs Program Incentive Leverage Fund for the
13 payment of principal, interest and other costs associated with the
14 issuance of obligations pursuant to the provisions of this act. The
15 Oklahoma Development Finance Authority shall establish separate
16 accounts within the Quality Jobs Program Incentive Leverage Fund as
17 may be required to separately record transactions involving each
18 establishment that files an irrevocable election or second
19 irrevocable election pursuant to Section ~~8~~ 3658 of this ~~act~~ title
20 and to provide for the deposit of incentive payments, if applicable,
21 and withholding taxes apportioned to the Fund pursuant to Section ~~9~~
22 3659 of this ~~act~~ title or for such other purposes as the Authority
23 may determine to be necessary.

24

1 SECTION 7. AMENDATORY Section 8, Chapter 299, O.S.L.
2 2002 (68 O.S. Supp. 2007, Section 3658), is amended to read as
3 follows:

4 Section 3658. A. An establishment, as defined in Section ~~3~~
5 3653 of this ~~act~~ title, which ~~is otherwise~~ has been authorized to
6 receive incentive payments pursuant to the Oklahoma Quality Jobs
7 Program Act ~~and that is in receipt of incentive payments or has~~
8 ~~qualified for receipt of incentive payments as of the date of the~~
9 ~~irrevocable election~~ prior to the effective date of this act, and
10 that intends to use proceeds derived from the sale of obligations
11 issued pursuant to Section 4 3654 of this ~~act~~ title which
12 obligations are issued on or after the effective date of this act,
13 shall, as a condition of being eligible to make use of such
14 proceeds, file ~~an~~ a second irrevocable election with the Oklahoma
15 Department of Commerce ~~to have such incentive payments which would~~
16 ~~otherwise be paid to the establishment transferred to the Quality~~
17 ~~Jobs Program Incentive Leverage Fund.~~

18 B. An establishment shall file its second irrevocable election
19 with the Oklahoma Department of Commerce not later than ~~August 1,~~
20 ~~2003,~~ one hundred eighty (180) days prior to the last date that
21 withholding tax revenues attributable to the payroll of the
22 establishment are legally required to be used in satisfaction of any
23 debt service requirements or related costs imposed pursuant to an
24 issuance of obligations by the Oklahoma Development Finance

1 Authority if such issuance occurred prior to the effective date of
2 this act. Such second irrevocable election shall be required in
3 order for the establishment to be eligible for use of any proceeds
4 from the sale of additional obligations authorized by Section 4 3654
5 of this act title which obligations are issued on or after the
6 effective date of this act. No establishment that is not in receipt
7 of or that has not qualified for receipt of incentive payments
8 pursuant to the Quality Jobs Program Act may file an election
9 pursuant to this section From the date upon which the second
10 irrevocable election is filed until the last date upon which
11 withholding tax revenues attributable to the payroll of the
12 establishment are legally required to be used in satisfaction of any
13 debt service requirements or related costs imposed as a result of
14 obligations issued by the Oklahoma Development Finance Authority
15 prior to the effective date of this act, the five-year period of
16 time within which the establishment would otherwise be required to
17 make investment pursuant to this act shall be extended.

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

1 ~~C.~~ D. Beginning upon the later date of July 1, 2003 2009, or
2 the first date upon which the revenues payable to the Authority from
3 the Quality Jobs Program Incentive Leverage Fund are no longer
4 committed to the payment of debt service requirements and related
5 costs in connection with obligations issued by the Authority
6 pursuant to the Quality Jobs Incentive Leverage Act prior to the
7 effective date of this act, and for each fiscal year thereafter as
8 otherwise required by this act, monies transferred to the Quality
9 Jobs Program Incentive Leverage Fund shall be used for the payment
10 of principal and interest or other costs associated with the
11 additional issuance of obligations by the Oklahoma Development
12 Finance Authority pursuant to the provisions of Section ~~4~~ 3654 of
13 ~~this act~~ title as a result of a second irrevocable election. Not
14 later than January 1 and July 1 of each year, the Oklahoma
15 Development Finance Authority shall certify to the Oklahoma
16 Department of Commerce and the Oklahoma Tax Commission the amount
17 which will be required for payment of principal, interest and other
18 costs associated with the issuance of such obligations for the
19 succeeding six-month period.

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

23 ~~1. The incentive payment made pursuant to the Oklahoma Quality~~
24 ~~Jobs Program Act for the establishment shall never be less than One~~

1 ~~Dollar (\$1.00) either during the period of the contract for the~~
2 ~~incentive payment or during the period of time obligations issued~~
3 ~~under Section 4 of this act remain unpaid; and~~

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

12 E. Beginning on the later date of July 1, 2003 2009, or the
13 first date upon which the revenues payable to the Authority from the
14 Quality Jobs Program Incentive Leverage Fund are no longer committed
15 to the payment of debt service requirements and related costs in
16 connection with obligations issued by the Authority pursuant to the
17 Quality Jobs Incentive Leverage Act prior to the effective date of
18 this act, and for each fiscal year thereafter as otherwise required
19 by this act, as often as may be necessary for the Oklahoma
20 Development Finance Authority to make payments with respect to
21 indebtedness issued pursuant to the provisions of this act as a
22 result of a second irrevocable election, the Tax Commission shall
23 transfer from the revenues specified in Section ~~9~~ 3659 of this act
24 title an amount required to equal the difference between the

1 incentive payment deposit and the amount certified pursuant to the
2 provisions of subsection C of this section. The Tax Commission
3 shall then transfer the total amount required pursuant to the
4 certification to the Oklahoma Development Finance Authority.

5 F. An establishment to which proceeds from the sale of any
6 obligations issued by the Oklahoma Development Finance Authority are
7 made available as provided by this act pursuant to a second
8 irrevocable election shall not claim any tax credits that would
9 otherwise be authorized pursuant to Section 2357.4 of Title 68 of
10 the Oklahoma Statutes as a result of jobs created or capital
11 investment made as a direct result of the use of such bond proceeds.
12 For purposes of this subsection and for purposes of computing any
13 tax credit pursuant to Section 2357.4 of Title 68 of the Oklahoma
14 Statutes, "bond proceeds" shall mean the amount transferred, paid or
15 made available to the establishment together with the total amount
16 of principal and interest paid by the Oklahoma Development Finance
17 Authority with respect to any amount of proceeds transferred, paid
18 or made available to the establishment.

19 G. An establishment that files ~~an~~ a second irrevocable election
20 authorized by this section and to which proceeds from the sale of
21 obligations authorized by Section 4 3654 of this ~~act~~ title are paid
22 or made available may utilize income tax credits earned prior to the
23 effective date of this act pursuant to Section 2357.4 of Title 68 of
24

1 the Oklahoma Statutes for a period of fifteen (15) taxable years
2 subsequent to the year in which the election is filed.

3 H. An establishment that files ~~an~~ a second irrevocable election
4 authorized by this section and to which any proceeds from the sale
5 of obligations authorized by Section 4 3654 of this ~~act~~ title are
6 paid or made available shall not be eligible to claim any exemption
7 pursuant to Section 6B of Article X of the Oklahoma Constitution or
8 Section 2902 of Title 68 of the Oklahoma Statutes with respect to
9 real or personal property constituting the facility described by the
10 establishment pursuant to the disclosure document as provided by
11 Section ~~5~~ 3655 of this ~~act~~ title. The maximum amount of investment
12 in any facility for purposes of the foregone exemption required by
13 this subsection shall be ~~Two Hundred Fifty Million Dollars~~
14 ~~(\$250,000,000.00)~~ Five Hundred Million Dollars (\$500,000,000.00),
15 inclusive of any amounts invested prior to the effective date of
16 this act.

17 I. An establishment that files ~~an~~ a second irrevocable election
18 authorized by this section and to which any proceeds from the sale
19 of obligations authorized by Section 4 3654 of this ~~act~~ title are
20 paid or made available shall not be eligible to claim any exemption
21 otherwise available pursuant to Section 1359 of Title 68 of the
22 Oklahoma Statutes with respect to the facility constructed,
23 acquired, improved or equipped with such proceeds. The provisions
24 of this subsection shall not require any waiver of sales tax

1 exemption with respect to personal property acquired for the
2 manufacturing process after completion of construction of the
3 applicable facility.

4 SECTION 8. AMENDATORY Section 9, Chapter 299, O.S.L.
5 2002 (68 O.S. Supp. 2007, Section 3659), is amended to read as
6 follows:

7 Section 3659. A. Beginning on the later date of July 1, 2003
8 2009, or the first date upon which the revenues payable to the
9 Authority from the Quality Jobs Program Incentive Leverage Fund are
10 no longer committed to the payment of debt service requirements and
11 related costs in connection with obligations issued by the Authority
12 pursuant to the Quality Jobs Incentive Leverage Act prior to the
13 effective date of this act, and for each fiscal year thereafter
14 during which any obligations issued by the Oklahoma Development
15 Finance Authority issued pursuant to Section 4 3654 of this ~~act~~
16 title remain unpaid as a result of a second irrevocable election,
17 the Oklahoma Tax Commission shall identify an establishment that
18 makes the second irrevocable election authorized by Section ~~8~~ 3658
19 of this ~~act~~ title and shall compute the amount of withholding taxes
20 imposed pursuant to Section 2385.2 of Title 68 of the Oklahoma
21 Statutes attributable to employees of that establishment whose wages
22 are subject to the levy.

23 B. Beginning on the later date of July 1, 2003 2009, or the
24 first date upon which the revenues payable to the Authority from the

1 Quality Jobs Program Incentive Leverage Fund are no longer committed
2 to the payment of debt service requirements and related costs in
3 connection with obligations issued by the Authority pursuant to the
4 Quality Jobs Incentive Leverage Act prior to the effective date of
5 this act, and for each fiscal year thereafter during which any
6 obligations issued by the Oklahoma Development Finance Authority
7 issued pursuant to Section 4 3654 of this ~~act~~ title as a result of a
8 second irrevocable election remain unpaid, the Oklahoma Tax
9 Commission shall transfer to the Quality Jobs Program Incentive
10 Leverage Fund an amount of withholding taxes remitted by an
11 establishment which has made the second irrevocable election equal
12 to the amount required pursuant to subsection E of Section & 3658 of
13 this ~~act~~ title. With respect to the withholding taxes remitted by
14 an establishment that makes the second irrevocable election pursuant
15 to Section 3658 of this title, the Tax Commission shall continue to
16 transfer such taxes to the Quality Jobs Program Incentive Leverage
17 Fund for any period of time after which the establishment files the
18 second irrevocable election. If the Oklahoma Development Finance
19 Authority does not issue obligations as a result of the second
20 irrevocable election, the establishment shall notify the Tax
21 Commission and the Oklahoma Development Finance Authority that
22 further transfers of withholding taxes remitted by the establishment
23 to the Quality Jobs Program Incentive Leverage Fund are not
24 required.

1 C. Subject to the provisions of Section 11 ~~of this act~~, Chapter
2 299, O.S.L. 2002, if the amount of the withholding taxes remitted by
3 the establishment is less than the amount required pursuant to
4 subsection E of Section ~~§~~ 3658 of this ~~act~~ title, the proceeds from
5 the guaranty required by subsection M of Section ~~4~~ 3654 of this ~~act~~
6 title shall be paid to the Quality Jobs Program Incentive Leverage
7 Fund.

8 D. After the amount of withholding taxes required to be
9 transmitted to the Quality Jobs Program Incentive Leverage Fund has
10 been computed, the remaining withholding tax remitted by a qualified
11 establishment shall be apportioned in the manner prescribed by law.

12 E. The amount of withholding taxes transferred to the Quality
13 Jobs Program Incentive Leverage Fund pursuant to this section shall
14 be deemed not to have accrued to the State Treasury for purposes of
15 certifications required by the State Board of Equalization pursuant
16 to Section 23 of Article X of the Oklahoma Constitution and shall be
17 deemed to be monies held in trust for the benefit of the Oklahoma
18 Development Finance Authority in order to repay obligations issued
19 by the Authority pursuant to Section ~~4~~ 3654 of this ~~act~~ title.

20 F. The withholding taxes attributable to the wages of employees
21 of an establishment which has made the second irrevocable election
22 provided for by Section ~~§~~ 3658 of this ~~act~~ title shall be
23 apportioned in the manner prescribed by law as soon as all of the
24 obligations of the Oklahoma Development Finance Authority issued

1 pursuant to Section 4 3654 of this ~~act~~ title have been fully repaid
2 and after such time the provisions of this section shall cease to
3 have the force and effect of law.

4 SECTION 9. AMENDATORY Section 10, Chapter 299, O.S.L.
5 2002 (68 O.S. Supp. 2007, Section 3660), is amended to read as
6 follows:

7 Section 3660. A. An establishment making the second
8 irrevocable election pursuant to the provisions of Section & 3658 of
9 this ~~act~~ title and which ceases to qualify for an incentive payment
10 pursuant to the provisions of the Oklahoma Quality Jobs Program Act,
11 other than a payment in the amount of One Dollar (\$1.00) as provided
12 in paragraph 1 of subsection D of Section & 3658 of this ~~act~~ title,
13 and the withholding tax collections of which are not sufficient to
14 make required payments of principal or interest because of a
15 reduction in gross payroll at a facility constructed with or
16 equipped with personal property acquired through the use of proceeds
17 from the issuance of obligations by the Oklahoma Development Finance
18 Authority pursuant to the provisions of this act, shall be liable to
19 the State of Oklahoma and the Oklahoma Development Finance Authority
20 for the amount of any required principal or interest payment
21 associated with obligations issued as a result of a second
22 irrevocable election the proceeds of which have been paid to the
23 establishment or are available for use by the establishment that

24

1 remains after using the incentive payment plus the withholding taxes
2 of the establishment.

3 B. An establishment incurring an obligation for the payment of
4 any principal, interest or other costs pursuant to subsection A of
5 this section shall be liable only for amounts accrued during such
6 period of time. The establishment shall not have any direct
7 liability for subsequent periods of time during which the sum of the
8 incentive payment and the withholding tax collected from the
9 establishment is sufficient to make required payments in
10 satisfaction of the obligations issued pursuant to subsection A of
11 Section 4 3654 of this ~~act~~ title.

12 SECTION 10. This act shall become effective November 1, 2008."

13 Passed the House of Representatives the 24th day of April, 2008.

14

15

16 _____
Presiding Officer of the House of
Representatives

17

18 Passed the Senate the ____ day of _____, 2008.

19

20

21 _____
Presiding Officer of the Senate

22

23

24