

ENROLLED SENATE  
BILL NO. 1943

By: Mazzei and Barrington of  
the Senate

and

Miller, Dorman, Jett and  
Hilliard of the House

An Act relating to public finance; amending 62 O.S. 2001, Sections 840, 841, as amended by Section 1, Chapter 448, O.S.L. 2004, 842, as amended by Section 2, Chapter 448, O.S.L. 2004, 843, as amended by Section 3, Chapter 448, O.S.L. 2004, 846, as amended by Section 5, Chapter 448, O.S.L. 2004, and 847, as amended by Section 6, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Sections 841, 842, 843, 846 and 847), which relate to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act; updating citations and scope of act; modifying and adding definitions; modifying type of local governmental entity that is eligible for state local government matching payments; expanding prohibition against state local government matching payments; adding application requirements and feasibility study for certain type of projects; expanding time period for eligibility for certain payments; clarifying intent of rules; modifying required content of certain certification documents; clarifying references; specifying manner in which certain taxes be administered; amending Sections 3, 4, 5, 6, 7 and 8, Chapter 349, O.S.L. 2007 (74 O.S. Supp. 2007, Sections 5062.31, 5062.32, 5062.33, 5062.34, 5062.35 and 5062.36), which relate to the Military Base Protection and Expansion Incentive Act; modifying legislative findings; modifying definitions; modifying terminology to reflect change in definition; expanding purposes for which bonds may

be issued; requiring certain certification; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2001, Section 840, is amended to read as follows:

Section 840. Sections ~~9 840~~ through ~~17 847~~ of this ~~act~~ title and Section 2357.81 of Title 68 of the Oklahoma Statutes shall be known and may be cited as the "Oklahoma Local Development and Enterprise Zone Incentive Leverage Act".

SECTION 2. AMENDATORY 62 O.S. 2001, Section 841, as amended by Section 1, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Section 841), is amended to read as follows:

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

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

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

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

a. relocating from within the state,

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

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

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

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

7. "Governing body" means the governing board of a local governmental entity in the case of a single incentive district or increment district when the boundaries of the district are coextensive with or contained within the jurisdiction of any such single local governmental entity or the governing boards of a combination of counties, cities, or towns forming an incentive district or an increment district pursuant to the provisions of the Local Development Act;

8. "Incentive district" means an area created pursuant to the provisions of the Local Development Act, including Section 856 of this title;

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

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

11. "Local sales taxes" means amounts payable to or for the benefit of a local governmental entity calculated as a percentage, which, except on transient lodgings, shall not exceed four and one-

half percent (4.5%) of gross sales whether imposed by ordinance, resolution, covenant, or agreement;

12. "Major tourism destination project" means a project which:

a. meets the definition of a "tourism attraction" as set forth in subparagraph a of paragraph 10 of Section 2357.36 of Title 68 of the Oklahoma Statutes, subject only to the restrictions of divisions (1), (3) and (6) of subparagraph b of paragraph 10 of Section 2357.36 of Title 68 of the Oklahoma Statutes,

b. is projected to meet the following qualifications within three (3) years of the date of substantial completion of the project based upon the findings of the Oklahoma Department of Commerce:

(1) at least Fifty Million Dollars (\$50,000,000.00) in capital investment,

(2) at least Fifty Million Dollars (\$50,000,000.00) in projected annual gross sales revenues or at least Ten Million Dollars (\$10,000,000.00) in annual gross sales revenues to out-of-state visitors,

(3) a number of out-of-state visitors of at least:

(a) twenty percent (20%) of the number of total visitors, or

(b) twenty thousand (20,000) visitors per year, and

(4) a number of visitors traveling at least one hundred (100) miles of at least:

(a) thirty percent (30%) of the number of total visitors, or

(b) twenty-five thousand (25,000) visitors per year, or

c. is a lake resort project, containing a hotel, a conference center, and an eighteen-hole golf course, located within twenty-five (25) linear miles of the state boundary on a lake containing at least forty-five thousand (45,000) surface acres of water, that is estimated to generate at least Fifty Million Dollars (\$50,000,000.00) in capital investment;

13. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross taxable sales derived from the project during the period of apportionment of local sales taxes by the local governmental entity;

~~12.~~ 14. "Public entity" means those entities described in the Local Development Act;

~~13.~~ 15. "Retail purposes" means the objectives of selling tangible personal property, other than art, on the physical premises of an establishment. Retail purposes shall not mean a hotel, motel, entertainment facility, museum, cultural facility, art gallery, restaurant supporting another establishment excluded herein, or a major tourism destination project;

16. "State local enterprise matching payment" means the payment authorized by subsection A of Section 844 of this title; and

~~14.~~ 17. "State local government matching payment" means the payment authorized by subsection D of Section 844 of this title.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 842, as amended by Section 2, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Section 842), is amended to read as follows:

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

B. 1. A local governmental entity which ~~constructs public improvements~~ approves a project plan pursuant to the provisions of the Local Development Act within an enterprise zone in accordance with a project plan as authorized pursuant to the provisions of the Local Development Act or in support of a major tourism destination project which the local governmental entity determines is likely to significantly benefit contiguous or nearby enterprise zone census tracts shall be eligible for the state local government matching payment authorized pursuant to subsection D of Section 844 of this title; provided, no state local government matching payment shall be made for project costs in relation to:

- a. any gambling establishment, or
- b. any project development within a project plan that provides for more than ten percent (10%) of the net leasable space of such development to be used for retail purposes or provides for state payments to.

State local government matching payments shall not be used to supplant local revenue currently being expended within the increment district boundaries.

2. In order to be eligible for state local government matching payments for approving a project within an enterprise zone, a local ~~government~~ governmental entity shall provide to the Oklahoma Department of Commerce as part of the application provided for in subsection J of this section:

~~1. An~~

- a. an estimate of net incremental revenues likely to be derived from export of goods outside the state borders or inflow of capital or sales from outside the state border, the project, and

~~2. Certification~~

- b. certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars (\$1,000,000.00) in payroll, exclusive of payroll for

construction, or Five Million Dollars (\$5,000,000.00) in investment.

3. In order to be eligible for state local government matching payments in support of a major tourism destination project, a local governmental entity shall provide to the Oklahoma Department of Commerce as part of the application provided for in subsection J of this section:

- a. an estimate of incremental revenues new to the state likely to be derived from the project,
- b. certification that the major tourism destination meets the applicable criteria described in paragraph 12 of Section 841 of this title, and
- c. an agreement to provide payment to the Oklahoma Department of Commerce to defray the costs of the study required by paragraph 4 of this subsection.

4. To determine if a project qualifies as a major tourism destination project pursuant to subparagraph b of paragraph 12 of Section 841 of this title and to assist in other required determinations, the Oklahoma Department of Commerce shall cause a market and feasibility study to be conducted by an independent consultant with experience in the conduct of such studies. Upon review of the feasibility report, the Oklahoma Department of Commerce shall make its finding as to the reasonable probability that the proposed project is a major tourism destination project as provided in subparagraph b of paragraph 12 of Section 841 of this title.

C. For purposes of the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, an enterprise engaged in a retail activity, where otherwise prohibited by the Oklahoma Enterprise Zone Act for purposes of the benefits and incentives extended pursuant to the Oklahoma Enterprise Zone Act, shall be considered an eligible enterprise for purposes of the state local enterprise matching payment and the income tax credit authorized by the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.

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

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

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

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

1. Not be less than Twenty Million Dollars (\$20,000,000.00) for counties with a population of less than one hundred thousand (100,000) persons; and

2. Not be greater than Forty Million Dollars (\$40,000,000.00) for all other counties of the state.

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

sales derived from the project over the period of apportionment of local sales taxes, as certified by the Secretary of Commerce.

I. The payments authorized by Section 844 of this title and the income tax credit authorized by Section 2357.81 of Title 68 of the Oklahoma Statutes shall be available for business and governmental entities qualifying pursuant to the Local Development Act for investments made within an incentive district or for improvements made within an increment district prior to December 31, 2007, or for which an incentive district or an increment district has been created prior to December 31, ~~2007~~ 2018, if the investments or improvements are begun not later than December 31, ~~2008~~ 2019.

J. The Oklahoma Department of Commerce shall promulgate rules to establish a procedure for an enterprise or local ~~government~~ governmental entity to make application for state local enterprise and state local government matching payments ~~under circumstances in which the amount of the investment in a facility would be in excess of the applicable aggregate investment limit~~ pursuant to this section. Such rules shall reflect the intent that the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act be fiscally neutral to the state.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 843, as amended by Section 3, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Section 843), is amended to read as follows:

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

1. The beginning date of the exemption;
2. The ending date of the exemption;

3. The total amount of projected investment to construct or expand the facility during the period for which the incentives

available pursuant to the Local Development Act will be in force and effect together with a certification by the Oklahoma Department of Commerce that the facility is located in an enterprise zone; and

4. The legal name and business entity classification of the entity to which exemption is afforded or to which sales tax payment is made by the local governmental entity or entities pursuant to the provisions of the Local Development Act.

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

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

D. The state local enterprise matching payment shall be made only for sales tax foregone by local governmental entities or rebated to the business enterprise by local entities for purchases made by the business enterprise and not on the basis of any sales tax collected by the business enterprise from consumers or users on taxable sales made by the enterprise.

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

1. The beginning date of the increment district;
2. The ending date of the increment district;

3. A description of the ~~improvements~~ project costs authorized by the project plan for which the state local government matching payments will be used and the estimated date for substantial

completion of the project being assisted as described in the application;

4. A certification by the Oklahoma Department of Commerce that the ~~increment district~~ project plan is located in an enterprise zone or supports a qualifying major tourism destination project, and that the qualifying investment and development has been or will be substantially completed no later than December 31, 2024;

5. The amount of the local sales taxes which have been apportioned during the previous six-month period by the local governmental entity for the payment of project costs pursuant to the provisions of the Local Development Act; and

6. The name of the public entity identified in the project plan pursuant to Section 858 of this title as the entity authorized to carry out activities pursuant to the project plan.

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

SECTION 5. AMENDATORY 62 O.S. 2001, Section 846, as amended by Section 5, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Section 846), is amended to read as follows:

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

B. As soon as is practicable after verification of the amount of state local government matching payments authorized by Section 844 of this title, the ~~Oklahoma~~ Tax Commission shall issue a warrant to the qualifying ~~local government~~ public entity in the amount

provided for in subsection D of Section 844 of this title, subject to the limitations imposed by Section 842 of this title.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 847, as amended by Section 6, Chapter 448, O.S.L. 2004 (62 O.S. Supp. 2007, Section 847), is amended to read as follows:

Section 847. A. The Oklahoma Tax Commission shall maintain a record of state local enterprise matching payments and state local government matching payments made pursuant to Section 844 of this title and a record of income tax credits claimed pursuant to Section 2357.81 of Title 68 of the Oklahoma Statutes. Local sales taxes apportioned under the applicable project plan shall be reported, collected, remitted, and disbursed in the same manner as other local sales taxes under Title 68 of the Oklahoma Statutes.

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

SECTION 7. AMENDATORY Section 3, Chapter 349, O.S.L. 2007 (74 O.S. Supp. 2007, Section 5062.31), is amended to read as follows:

Section 5062.31 The Legislature finds:

1. It is in the best interest of the State of Oklahoma to ensure the continued location and expansion of established military bases and facilities in this state;

2. Growth to political subdivisions as a result of the presence and expansion of military bases and facilities requires improved and expanded municipal and school infrastructure and facilities; and

3. Political subdivisions that serve military bases are in critical need of capital improvement projects, and the financing of such projects constitutes an important public purpose.

SECTION 8            AMENDATORY            Section 4, Chapter 349, O.S.L. 2007  
(74 O.S. Supp. 2007, Section 5062.32), is amended to read as  
follows:

Section 5062.32 As used in the Military Base Protection and  
Expansion Incentive Act:

1. "Authority" means the Oklahoma Development Finance  
Authority;

2. "Capital project" means the acquisition, construction,  
expansion, replacement, or renovation of a municipal, county or  
school district facility, including real property, buildings, and  
other fixed assets. Capital project shall not include furnishings  
or equipment that is not a fixed asset; and

3. "Qualified ~~political subdivision~~ issuer" means a  
municipality, county, school district, or public trust of which a  
municipality, county or school district is the beneficiary that:

- a. is located in or adjacent to a county that is home to  
a military installation receiving military or mission  
expansion from the 2005 Base Realignment and Closure  
Commission (BRAC) recommendations, and
- b. encompasses all or part of a school district that is  
entitled to receive federal impact aid dollars or  
federal payment in lieu of tax dollars for the most  
recently completed school year.

SECTION 9.            AMENDATORY            Section 5, Chapter 349, O.S.L.  
2007 (74 O.S. Supp. 2007, Section 5062.33), is amended to read as  
follows:

Section 5062.33 There is hereby created a loan program, the  
purpose of which is to protect and retain established military bases  
and facilities and to support additional and expanded employment at  
such bases and facilities. The program shall provide funding to  
qualified ~~political subdivisions~~ issuers to finance capital projects  
needed as a result of growth due to or in connection with an  
established military base.

SECTION 10. AMENDATORY Section 6, Chapter 349, O.S.L. 2007 (74 O.S. Supp. 2007, Section 5062.34), is amended to read as follows:

Section 5062.34 A. When a qualified ~~political subdivision~~ issuer that is or will be impacted by growth at a military installation, proposes to acquire or construct a capital project, the Oklahoma Development Finance Authority may serve as conduit issuer for the capital project in the form of loans, lease-purchase agreements, or other forms of indebtedness.

B. For the capital projects described in subsection A of this section, the Authority may issue bonds to provide funding:

1. To acquire real property, together with improvements thereon;

2. To construct buildings and other improvements to real property; ~~and~~

3. To provide repairs, renovations, and improvements to real property and other fixed assets; and

4. To defease or refund bonds or other obligations of a qualified issuer which were issued to finance a capital project as defined herein; and further, to fund necessary bond reserves and to pay costs of issuance of any obligations issued under this act.

C. The Authority shall not issue bonds for loans, lease-purchase agreements, or other forms of indebtedness for a qualified ~~political subdivision~~ issuer pursuant to the Military Base Protection and Expansion Incentive Act except upon the certification by the qualified ~~political subdivision~~ issuer that it has received or will receive an amount sufficient to repay the indebtedness as a result of a voter-approved incentive derived from a tax levy. Further, the qualified issuer shall certify that it will not use the proceeds of general obligation bonds to pay the interest on any lease-purchase obligations.

D. The Authority may hold title to the new real property and improvements and place liens on improved existing real property until such time as any obligations issued for the purpose of the

capital project are retired or defeased and may lease the real property and improvements to the qualified ~~political subdivision~~ issuer. Upon final redemption or defeasance of the obligations created pursuant to this section, title to the real property and improvements thereon shall be transferred from the Authority to the qualified ~~political subdivision~~ issuer.

E. The Authority may defer principal payments on loans made pursuant to the Military Base Protection and Expansion Incentive Act for a period not to exceed five (5) years.

SECTION 11. AMENDATORY Section 7, Chapter 349, O.S.L. 2007 (74 O.S. Supp. 2007, Section 5062.35), is amended to read as follows:

Section 5062.35 A. It is the intent of the Legislature to appropriate monies to the Oklahoma Department of Commerce in a total amount not to exceed Five Million Dollars (\$5,000,000.00) per year for the purpose of funding interest payments of obligations issued by the Authority pursuant to this act during the initial five (5) years of the obligations. The appropriated funds shall be deposited in the Military Base Protection and Expansion Bond Fund.

B. Upon the completion of the periods, if any, during which principal payments are deferred and during which interest payments are made from the Military Base Protection and Expansion Bond Fund for a qualified ~~political subdivision~~ issuer, the qualified ~~political subdivision~~ issuer shall pay all principal, interest, and other appropriate costs associated with the issuance of the obligations. Payments may be in the form of lease payments to the Authority as described in subsection D of Section ~~6~~ 5062.34 of this ~~act~~ title.

C. Bonds issued by the Authority under this act must be delivered no later than June 30, 2010. No monies will be provided pursuant to this section after June 30, 2015, for interest payments on bonds issued under this act.

SECTION 12. AMENDATORY Section 8, Chapter 349, O.S.L. 2007 (74 O.S. Supp. 2007, Section 5062.36), is amended to read as follows:

Section 5062.36 A. There is hereby created within the State Treasury a special fund for the Department of Commerce to be designated as the "Military Base Protection and Expansion Bond Fund". All monies deposited into the fund shall be used and expended by the Department solely to pay interest on bonds issued pursuant to the terms of this act. The Department shall enter into agreements as necessary to carry out the purposes of this act.

B. The Department may establish separate accounts within the Military Base Protection and Expansion Bond Fund as may be required to separately record transactions involving each qualified ~~political subdivision~~ issuer that applies to participate in the loan program created by this act and to provide for the distribution of monies deposited in the fund.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 14th day of May, 2008.

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Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2008.

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Presiding Officer of the House  
of Representatives