

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1943

By: Mazzei

4
5 AS INTRODUCED

6 An Act relating to public finance; amending 62 O.S.
7 2001, Sections 840, 841, as amended by Section 1,
8 Chapter 448, O.S.L. 2004, 842, as amended by Section
9 2, Chapter 448, O.S.L. 2004, 843, as amended by
10 Section 3, Chapter 448, O.S.L. 2004, 846, as amended
11 by Section 5, Chapter 448, O.S.L. 2004, and 847, as
12 amended by Section 6, Chapter 448, O.S.L. 2004 (62
13 O.S. Supp. 2007, Sections 841, 842, 843, 846 and
14 847), which relate to the Oklahoma Local Development
15 and Enterprise Zone Incentive Leverage Act; updating
16 citations and scope of act; modifying and adding
17 definitions; expanding prohibition against state
18 local government matching payments; adding
19 application requirements and feasibility study for
20 certain type of projects; expanding time period for
21 eligibility for certain payments; clarifying intent
22 of rules; modifying required content of certain
23 certification documents; clarifying references;
24 specifying manner in which certain taxes be
administered; and declaring an emergency.

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

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

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

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

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

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

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

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

- 22 a. relocating from within the state,
23 b. subject to or in the process of recruitment by two or
24 more governmental entities within the state, or

1 c. which will be in direct competition with an existing
2 enterprise located in the state;

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

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

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

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

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

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

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

4 11. "Local sales taxes" means amounts payable to or for the
5 benefit of a local governmental entity calculated as a percentage,
6 which, except on transient lodgings, shall not exceed four and one-
7 half percent (4.5%), of gross sales whether imposed by ordinance,
8 resolution, covenant, or agreement;

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

10 a. meets the definition of a "tourism attraction" as set
11 forth in subparagraph a of paragraph 10 of Section
12 2357.36 of Title 68 of the Oklahoma Statutes, subject
13 only to the restrictions of divisions (1), (3) and (6)
14 of subparagraph b of paragraph 10 of Section 2357.36
15 of Title 68 of the Oklahoma Statutes, or

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

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

22 (2) at least Fifty Million Dollars (\$50,000,000.00)
23 in projected annual gross sales revenues or at
24 least Ten Million Dollars (\$10,000,000.00) in

1 annual gross sales revenues to out-of-state
2 visitors,

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

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

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

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

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

12 (b) twenty-five thousand (25,000) visitors per
13 year;

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

18 ~~12.~~ 14. "Public entity" means those entities described in the
19 Local Development Act;

20 ~~13.~~ 15. "Retail purposes" means the objectives of selling
21 tangible personal property, other than art, on the physical premises
22 of an establishment. Retail purposes shall not mean a hotel, motel,
23 entertainment facility, museum, cultural facility, art gallery,
24

1 restaurant supporting another establishment excluded herein, or a
2 major tourism destination project;

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

5 ~~14.~~ 17. "State local government matching payment" means the
6 payment authorized by subsection D of Section 844 of this title.

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

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

17 B. 1. A local governmental entity which ~~constructs public~~
18 ~~improvements~~ approves a project plan within an enterprise zone in
19 accordance with a project plan as authorized pursuant to the
20 provisions of the Local Development Act shall be eligible for the
21 state local government matching payment authorized pursuant to
22 subsection D of Section 844 of this title; provided, no state local
23 government matching payment shall be made for project costs in
24 relation to:

1 a. any gambling establishment, or

2 b. any ~~project~~ development within a project plan that
3 provides for more than ten percent (10%) of the net
4 leasable space of such development to be used for
5 retail purposes ~~or provides for state payments to.~~

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

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

14 ~~1. An~~

15 a. an estimate of ~~net~~ incremental revenues likely to be
16 derived from ~~export of goods outside the state borders~~
17 ~~or inflow of capital or sales from outside the state~~
18 ~~border;~~ the project, and

19 ~~2. Certification~~

20 b. certification that all projects described within the
21 related project plan will generate, in the aggregate,
22 a minimum of either One Million Dollars
23 (\$1,000,000.00) in payroll, exclusive of payroll for
24

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

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

8 a. an estimate of incremental revenues new to the state
9 likely to be derived from the project,

10 b. certification that the major tourism destination meets
11 the applicable criteria described in paragraph 12 of
12 Section 841 of this title, and

13 c. an agreement to provide payment to the Oklahoma
14 Department of Commerce to defray the costs of the
15 study required by paragraph 4 of this subsection.

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

1 provided in subparagraph b of paragraph 12 of Section 841 of this
2 title.

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

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

17 E. Except as provided in subsection H of this section, for
18 purposes of the Oklahoma Local Development and Enterprise Zone
19 Incentive Leverage Act, the maximum amount of aggregate investment
20 in all qualifying facilities located in any single county which can
21 qualify for a state local enterprise matching payment pursuant to
22 subsection A of Section 844 of this title or for an income tax
23 credit as authorized by Section 2357.81 of Title 68 of the Oklahoma
24 Statutes shall be computed for each county of the state by

1 multiplying Two Hundred Dollars (\$200.00) times the population of
2 the county according to the 1999 estimate provided by the United
3 States Bureau of the Census.

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

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

13 1. Not be less than Twenty Million Dollars (\$20,000,000.00) for
14 counties with a population of less than one hundred thousand
15 (100,000) persons; and

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

18 H. The aggregate limit for all state local government matching
19 payments made to any public entity on behalf of any local
20 governmental entity within a single county pursuant to subsection D
21 of Section 844 of this title for the duration of the Oklahoma Local
22 Development and Enterprise Zone Incentive Leverage Act shall be an
23 amount equal to the net benefit rate multiplied by the taxable gross
24

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

3 I. The payments authorized by Section 844 of this title and the
4 income tax credit authorized by Section 2357.81 of Title 68 of the
5 Oklahoma Statutes shall be available for business and governmental
6 entities qualifying pursuant to the Local Development Act for
7 investments made within an incentive district or for improvements
8 made within an increment district prior to December 31, 2007, or for
9 which an incentive district or an increment district has been
10 created prior to ~~December 31, 2007~~ December 31, 2018, if the
11 investments or improvements are begun not later than ~~December 31,~~
12 ~~2008~~ December 31, 2019.

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

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

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

- 9 1. The beginning date of the exemption;
- 10 2. The ending date of the exemption;
- 11 3. The total amount of projected investment to construct or
12 expand the facility during the period for which the incentives
13 available pursuant to the Local Development Act will be in force and
14 effect together with a certification by the Oklahoma Department of
15 Commerce that the facility is located in an enterprise zone; and
- 16 4. The legal name and business entity classification of the
17 entity to which exemption is afforded or to which sales tax payment
18 is made by the local governmental entity or entities pursuant to the
19 provisions of the Local Development Act.

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

22 C. After the enterprise provides a certification from the local
23 governing body, the Tax Commission shall make payment to the
24 enterprise identified in the certification document equal to the

1 amount of the sales tax from which the enterprise is certified as
2 exempt as identified in the certification in the manner prescribed
3 by subsection A of Section 844 of this title.

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

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

- 18 1. The beginning date of the increment district;
- 19 2. The ending date of the increment district;
- 20 3. A description of the ~~improvements~~ project costs authorized
21 by the project plan for which the state local government matching
22 payments will be used and the estimated date for substantial
23 completion of the project being assisted as described in the
24 application;

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

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

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

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

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

22 Section 846. A. As soon as practicable after verification of
23 the amount of the state local enterprise matching payments
24 authorized by Section 844 of this title, the Oklahoma Tax Commission

1 shall issue a warrant to the qualifying establishment in the amount
2 of the sales tax exempted or apportioned pursuant to the applicable
3 provisions of the Local Development Act, subject to the limitations
4 imposed by Section 842 of this title.

5 B. As soon as is practicable after verification of the amount
6 of state local government matching payments authorized by Section
7 844 of this title, the ~~Oklahoma~~ Tax Commission shall issue a warrant
8 to the qualifying ~~local government~~ public entity in the amount
9 provided for in subsection D of Section 844 of this title, subject
10 to the limitations imposed by Section 842 of this title.

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

14 Section 847. A. The Oklahoma Tax Commission shall maintain a
15 record of state local enterprise matching payments and state local
16 government matching payments made pursuant to Section 844 of this
17 title and a record of income tax credits claimed pursuant to Section
18 2357.81 of Title 68 of the Oklahoma Statutes. Local sales taxes
19 apportioned under the applicable project plan shall be reported,
20 collected, remitted, and disbursed in the same manner as other local
21 sales taxes under Title 68 of the Oklahoma Statutes.

22 B. The Tax Commission shall prepare a report separately
23 identifying the amounts described in subsection A of this section
24 and shall submit the report prior to April 1 each year to the

1 Governor, the Speaker of the House of Representatives and the
2 President Pro Tempore of the Senate.

3 SECTION 7. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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