

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1953

By: Mc Niel and Pittman of the
House

4 and

5 Mazzei of the Senate

6
7
8 An Act relating to economic development; making
9 legislative findings; creating the Oklahoma Quick
10 Action Closing Fund; providing for sources of
11 revenue; providing for expenditure of monies from
12 fund; prescribing method for payment of expenditures;
13 prescribing procedures; prescribing requirements for
14 certain business establishments; requiring analysis
15 by the Oklahoma Department of Commerce; requiring
16 analysis of potential impact of business activity;
17 imposing duties upon the Director of the Oklahoma
18 Department of Commerce; prescribing certain selection
19 criteria; requiring administrative rules; requiring
20 evaluation to be submitted to President Pro Tempore
of the Oklahoma State Senate and Speaker of the
Oklahoma House of Representatives; providing for
certain agreements; prescribing content of
agreements; requiring certain information to be
available through website; providing exemption for
proprietary information; providing for imposition of
lien; providing for repayment of certain amounts;
providing for cessation of provisions based upon
deposit, appropriation or apportionment to Quick
Action Closing Fund; and providing for codification.

21 AUTHOR: Add the following House Coauthor: Kirby

22 AMENDMENT NO. 1. Page 3, line 21 1/2, insert a new subsection D to
23 read
24

1 "D. Money from the Oklahoma Quick Action Closing Fund, nor any
2 other public funds, shall not be transferred to, expended at the
3 request of, or expended on behalf of any:

4 1. Corporate entity, or affiliated corporate entity or
5 partnership; or

6 2. Partnership, or affiliated corporate entity or partnership;
7 if such entity or partnership makes independent expenditures,
8 payments, or in-kind contributions, directly to or indirectly
9 through entities which one would reasonably believe will be used for
10 electioneering communications on behalf of or against any one or
11 more political parties or candidates for state office. This
12 prohibition shall apply for the twelve-month period preceding and
13 for the five-year period following the later of the application for
14 or distribution of expenditures from the Oklahoma Quick Action
15 Closing Fund or other public funds.

16 Every applicant or direct beneficiary, as a prerequisite to the
17 expenditure of any money from the Oklahoma Quick Action Closing Fund
18 or other public funds, shall agree not to make such contributions,
19 independent expenditures or payments.

20 The president of the board, chief executive officer of the
21 corporate entity or general or managing members of the partnership,
22 shall provide a notarized affidavit evidencing compliance with the
23 provisions of this section upon expenditure of such funds and each
24 year thereafter for the five-year period. If no such affidavit is

1 filed or if a corporate entity or partnership otherwise violates the
2 provisions of this subsection, any money from the Oklahoma Quick
3 Action Closing Fund or any other public funds shall be repaid to the
4 State Treasury, for deposit to the fund from which expended, with
5 interest at the rate assessed by law upon delinquent income taxes."

6 and re-letter subsequent subsections

7 AMENDMENT NO. 2. Page 1, strike the title to read

8 "[economic development - creating the Oklahoma Quick
9 Action Closing Fund - codification]"

10 and when the title is restored, amend the title to conform

11 Passed the Senate the 27th day of April, 2011.

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Presiding Officer of the Senate

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15 Passed the House of Representatives the ____ day of _____,
16 2011.

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Presiding Officer of the House
of Representatives

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deposit, appropriation or apportionment to Quick
Action Closing Fund; and providing for codification.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 48.1 of Title 62, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The Legislature finds the following to be beneficial goals
2 of the state: attracting, retaining and providing favorable
3 conditions for the recruitment and growth of certain high-impact
4 business projects or facilities which provide widespread economic
5 benefits to the public through high-quality employment opportunities
6 or capital investment in such projects or facilities and net
7 economic benefits to the state.

8 B. The Legislature further finds that there exists serious
9 competition for these projects and facilities, and that without a
10 workable closing fund, Oklahoma continues to be at a competitive
11 disadvantage in vying with states that have such a fund for
12 attracting and/or retaining these business projects.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 48.2 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 A. There is hereby created in the State Treasury a revolving
17 fund for the Oklahoma Department of Commerce to be designated the
18 Oklahoma Quick Action Closing Fund. The fund shall be a continuing
19 fund, not subject to fiscal year limitations and shall consist of:

- 20 1. All monies apportioned or allocated to the fund pursuant to
21 law;
- 22 2. Any amounts appropriated by the Legislature to the fund;
- 23 3. Interest earned on the investment of money in the fund; and
- 24 4. Gifts, grants, and other donations received for the fund.

1 B. All monies accruing to the credit of the fund are hereby
2 appropriated and may be budgeted and expended by the Governor for
3 the purposes of economic development and related infrastructure
4 development in instances in which expenditure of such funds would
5 likely be a determining factor in locating a high-impact business
6 project or facility in Oklahoma or in retaining such project or
7 facility within the state. Expenditures from the fund shall be made
8 upon warrants issued by the State Treasurer against claims filed as
9 prescribed by law with the Director of the Office of State Finance
10 for approval and payment.

11 C. In order to qualify for any funds from the Oklahoma Quick
12 Action Closing Fund, the establishment making application shall be
13 engaged in a business activity described by a North American
14 Industry Classification System (NAICS) Code used to define
15 eligibility for incentive payments from the Oklahoma Quality Jobs
16 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
17 Statutes or a business activity described by Section 3603 of Title
18 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
19 to define eligibility for incentive payments from the 21st Century
20 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
21 of the Oklahoma Statutes.

22 D. The Governor shall not approve payments from the Oklahoma
23 Quick Action Closing Fund unless the Department of Commerce has
24 conducted a complete analysis of the potential impact of the

1 applicant's business activity which shall include, but not be
2 limited to:

3 1. The number of jobs to be created by a new business
4 establishment;

5 2. The number of jobs to be retained by an existing business
6 establishment;

7 3. The average salary of jobs to be created by a new
8 establishment;

9 4. The average salary of jobs to be retained by an existing
10 business establishment;

11 5. The total capital investment to be made by the business
12 establishment;

13 6. The likelihood of other business establishments locating
14 within the same vicinity or within the state as a result of the
15 business activity to be conducted by the entity to receive payments
16 from the Oklahoma Quick Action Closing Fund;

17 7. The impact on the economy of the area or community in which
18 the business activity of the applicant is or will be conducted; and

19 8. Such other factors as the Governor and the Department of
20 Commerce determine to be relevant.

21 E. The Oklahoma Department of Commerce shall administer the
22 Oklahoma Quick Action Closing Fund, and expenditures from the fund
23 shall be recommended by the Director of the Oklahoma Department of
24 Commerce to the Governor after a thorough evaluation of selected

1 projects or facilities. The Director of the Oklahoma Department of
2 Commerce shall only recommend expenditures that the Director
3 determines are expected to result in a net economic benefit to the
4 state through the following:

5 1. The creation of new jobs which offer a basic health benefit
6 plan, as defined in the Oklahoma Quality Jobs Program Act;

7 2. The maintenance of existing jobs which are at a risk for
8 termination;

9 3. Investment in new real property, plant or equipment or in
10 the improvement or retooling of existing plant or equipment; or

11 4. Additional revenues in either ad valorem, income or sales
12 and use taxes.

13 F. The Oklahoma Department of Commerce shall develop rules for
14 the process of reviewing proposed expenditures from the Oklahoma
15 Quick Action Closing Fund and for the determination of whether or
16 not proposed expenditures meet the criteria identified in subsection
17 E of this section. Criteria shall include requirements for economic
18 impact, local participation in the project, capital investment and
19 average wage thresholds.

20 G. Upon receipt of an evaluation that recommends an expenditure
21 from the Oklahoma Quick Action Closing Fund from the Director of the
22 Oklahoma Department of Commerce, the Governor shall provide the
23 evaluation and recommendation to the President Pro Tempore of the
24 State Senate and the Speaker of the Oklahoma House of

1 Representatives before giving final approval for the expenditure on
2 the project. The Executive Office of the Governor shall recommend
3 final approval of an expenditure on a project pursuant to
4 consultation with the President Pro Tempore of the State Senate and
5 the Speaker of the Oklahoma House of Representatives.

6 H. Upon approval by the Governor, the Oklahoma Department of
7 Commerce shall enter into an agreement that sets forth the
8 conditions for payment of monies from the Oklahoma Quick Action
9 Closing Fund. The agreement must include:

- 10 1. The total amount of funds awarded;
- 11 2. The performance conditions that must be met to obtain the
12 award, including, but not limited to, net new employment in the
13 state, average salary, and total capital investment;
- 14 3. If appropriate, a baseline of current service and measure of
15 enhanced capability;
- 16 4. The methodology of validating performance; and
- 17 5. The schedule of payments from the fund, and claw-back
18 provisions for failure to meet performance conditions.

19 I. The Department of Commerce shall make available on its
20 website or other website dedicated for this purpose a complete
21 disclosure of all payments made from the Oklahoma Quick Action
22 Closing Fund. The disclosure shall include a description of the
23 expenditures made by the business establishment with the payments
24 made from the fund. No proprietary information of the business

1 establishment shall be subject to the requirements of this
2 subsection.

3 J. If any or all of the amount to be awarded is used to build a
4 capital improvement:

5 1. The state retains a lien or other interest in the capital
6 improvement in proportion to the amount awarded by the written
7 agreement for the capital improvement; and

8 2. If the capital improvement is sold, the recipient of the
9 award shall:

10 a. repay the state the money awarded to pay for the
11 capital improvement, with interest at the rate and
12 according to the other terms provided by the
13 agreement, and

14 b. share with the state a proportionate amount of any
15 profit realized from the sale.

16 K. If, as of the date certain provided in the agreement, the
17 award recipient has not used monies awarded for the intended
18 purposes, the recipient shall repay that amount and any related
19 interest to the state at the agreed rate and on the agreed terms.

20 L. The provisions of this act shall cease to have the force and
21 effect of law on the July 1 date of the sixth fiscal year after the
22 first fiscal year for which any funds are deposited to, appropriated
23 to, apportioned to or otherwise transferred to the Oklahoma Quick
24 Action Closing Fund.

1 Passed the House of Representatives the 16th day of March, 2011.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate