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HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1953

By: Mc Niel of the House and Mazzei of the Senate

Title: Economic development; creating the Oklahoma Quick Action Closing Fund; codification;
effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendments and that the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HOUSE CONFEREES

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As of 5/13/2011 1:34:53 PM

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1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1953

By: McNiell, Pittman and Kirby
of the House

7 and

Mazzei of the Senate

8
9 CONFERENCE COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

24

1 1. All monies apportioned or allocated to the fund pursuant to
2 law;

3 2. Any amounts appropriated by the Legislature to the fund;

4 3. Interest earned on the investment of money in the fund; and

5 4. Gifts, grants, and other donations received for the fund.

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

16 C. In order to qualify for any funds from the Oklahoma Quick
17 Action Closing Fund, the establishment making application shall be
18 engaged in a business activity described by a North American
19 Industry Classification System (NAICS) Code used to define
20 eligibility for incentive payments from the Oklahoma Quality Jobs
21 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
22 Statutes or a business activity described by Section 3603 of Title
23 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
24 to define eligibility for incentive payments from the 21st Century

1 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
2 of the Oklahoma Statutes.

3 D. The Governor shall not approve payments from the Oklahoma
4 Quick Action Closing Fund unless the Department of Commerce has
5 conducted a complete analysis of the potential impact of the
6 applicant's business activity which shall include, but not be
7 limited to:

8 1. The number of jobs to be created by a new business
9 establishment;

10 2. The number of jobs to be retained by an existing business
11 establishment;

12 3. The average salary of jobs to be created by a new
13 establishment;

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

16 5. The total capital investment to be made by the business
17 establishment;

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

22 7. The impact on the economy of the area or community in which
23 the business activity of the applicant is or will be conducted; and
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1 8. Such other factors as the Governor and the Department of
2 Commerce determine to be relevant.

3 E. The Oklahoma Department of Commerce shall administer the
4 Oklahoma Quick Action Closing Fund, and expenditures from the fund
5 shall be recommended by the Director of the Oklahoma Department of
6 Commerce to the Governor after a thorough evaluation of selected
7 projects or facilities. The Director of the Oklahoma Department of
8 Commerce shall only recommend expenditures that the Director
9 determines are expected to result in a net economic benefit to the
10 state through the following:

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

13 2. The maintenance of existing jobs which are at a risk for
14 termination;

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

17 4. Additional revenues in either ad valorem, income or sales
18 and use taxes.

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

3 G. Upon receipt of an evaluation that recommends an expenditure
4 from the Oklahoma Quick Action Closing Fund from the Director of the
5 Oklahoma Department of Commerce, the Governor shall provide the
6 evaluation and recommendation to the President Pro Tempore of the
7 State Senate and the Speaker of the Oklahoma House of
8 Representatives before giving final approval for the expenditure on
9 the project. The Executive Office of the Governor shall recommend
10 final approval of an expenditure on a project pursuant to
11 consultation with the President Pro Tempore of the State Senate and
12 the Speaker of the Oklahoma House of Representatives.

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

- 17 1. The total amount of funds awarded;
- 18 2. The performance conditions that must be met to obtain the
19 award, including, but not limited to, net new employment in the
20 state, average salary, and total capital investment;
- 21 3. If appropriate, a baseline of current service and measure of
22 enhanced capability;
- 23 4. The methodology of validating performance;

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1 5. The schedule of payments from the fund, and claw-back
2 provisions for failure to meet performance conditions; and

3 6. A requirement that no monies paid from the Oklahoma Quick
4 Action Closing Fund shall be used by a recipient or any other person
5 or entity for purposes of any political contribution to or on behalf
6 of any candidate or for the support of or opposition to any measure
7 including but not limited to an initiative petition or referendum.

8 I. The Department of Commerce shall make available on its
9 website or other website dedicated for this purpose a complete
10 disclosure of all payments made from the Oklahoma Quick Action
11 Closing Fund. The disclosure shall include a description of the
12 expenditures made by the business establishment with the payments
13 made from the fund. No proprietary information of the business
14 establishment shall be subject to the requirements of this
15 subsection.

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

18 1. The funds used for the capital improvement shall be deemed
19 to be held in trust for the benefit of the state and shall be
20 considered as a priority claim for purposes of federal bankruptcy
21 law; and

22 2. If the capital improvement is sold, the recipient of the
23 award shall:

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1 a. repay the state the money awarded to pay for the
2 capital improvement, with interest at the rate and
3 according to the other terms provided by the
4 agreement, and

5 b. share with the state a proportionate amount of any
6 profit realized from the sale.

7 K. If, as of the date certain provided in the agreement, the
8 award recipient has not used monies awarded for the intended
9 purposes, the recipient shall repay that amount and any related
10 interest to the state at the agreed rate and on the agreed terms and
11 any such amounts shall be deemed to be held in trust for the benefit
12 of the state and shall be considered as a priority claim for
13 purposes of federal bankruptcy law.

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

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