

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2346

By: McNiel

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8 COMMITTEE SUBSTITUTE

9 An Act relating to public finance; amending 62 O.S.
10 2011, Section 48.2, which relates to the Oklahoma
11 Quick Action Closing Fund; modifying procedures
12 related to final approval of expenditures; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, is
16 amended to read as follows:

17 Section 48.2 A. There is hereby created in the State Treasury
18 a revolving fund for the Oklahoma Department of Commerce to be
19 designated the Oklahoma Quick Action Closing Fund. The fund shall
20 be a continuing fund, not subject to fiscal year limitations and
21 shall consist of:

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

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

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

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

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

14 C. In order to qualify for any funds from the Oklahoma Quick
15 Action Closing Fund, the establishment making application shall be
16 engaged in a business activity described by a North American
17 Industry Classification System (NAICS) Code used to define
18 eligibility for incentive payments from the Oklahoma Quality Jobs
19 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
20 Statutes or a business activity described by Section 3603 of Title
21 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
22 to define eligibility for incentive payments from the 21st Century
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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~~ after giving final approval for the
9 expenditure on the project. ~~The Executive Office of the Governor~~
10 ~~shall recommend final approval of an expenditure on a project~~
11 ~~pursuant to consultation with the President Pro Tempore of the State~~
12 ~~Senate and 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.

19 SECTION 2. This act shall become effective November 1, 2012.

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21 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
22 FINANCIAL SERVICES, dated 02/16/2012 - DO PASS, As Amended.