

1 **SENATE FLOOR VERSION**

2 April 7, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1953

6 By: McNiell and Pittman of the
7 House

8 and

9 Mazzei of the Senate

10 [economic development - creating the Oklahoma Quick
11 Action Closing Fund - codification]

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

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

16 A. The Legislature finds the following to be beneficial goals
17 of the state: attracting, retaining and providing favorable
18 conditions for the recruitment and growth of certain high-impact
19 business projects or facilities which provide widespread economic
20 benefits to the public through high-quality employment opportunities
21 or capital investment in such projects or facilities and net
22 economic benefits to the state.

23 B. The Legislature further finds that there exists serious
24 competition for these projects and facilities, and that without a

1 workable closing fund, Oklahoma continues to be at a competitive
2 disadvantage in vying with states that have such a fund for
3 attracting and/or retaining these business projects.

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

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

- 11 1. All monies apportioned or allocated to the fund pursuant to
12 law;
- 13 2. Any amounts appropriated by the Legislature to the fund;
- 14 3. Interest earned on the investment of money in the fund; and
- 15 4. Gifts, grants, and other donations received for the fund.

16 B. All monies accruing to the credit of the fund are hereby
17 appropriated and may be budgeted and expended by the Governor for
18 the purposes of economic development and related infrastructure
19 development in instances in which expenditure of such funds would
20 likely be a determining factor in locating a high-impact business
21 project or facility in Oklahoma or in retaining such project or
22 facility within the state. Expenditures from the fund shall be made
23 upon warrants issued by the State Treasurer against claims filed as

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1 prescribed by law with the Director of the Office of State Finance
2 for approval and payment.

3 C. In order to qualify for any funds from the Oklahoma Quick
4 Action Closing Fund, the establishment making application shall be
5 engaged in a business activity described by a North American
6 Industry Classification System (NAICS) Code used to define
7 eligibility for incentive payments from the Oklahoma Quality Jobs
8 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
9 Statutes or a business activity described by Section 3603 of Title
10 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
11 to define eligibility for incentive payments from the 21st Century
12 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
13 of the Oklahoma Statutes.

14 D. The Governor shall not approve payments from the Oklahoma
15 Quick Action Closing Fund unless the Department of Commerce has
16 conducted a complete analysis of the potential impact of the
17 applicant's business activity which shall include, but not be
18 limited to:

19 1. The number of jobs to be created by a new business
20 establishment;

21 2. The number of jobs to be retained by an existing business
22 establishment;

23 3. The average salary of jobs to be created by a new
24 establishment;

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

3 5. The total capital investment to be made by the business
4 establishment;

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

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

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

13 E. The Oklahoma Department of Commerce shall administer the
14 Oklahoma Quick Action Closing Fund, and expenditures from the fund
15 shall be recommended by the Director of the Oklahoma Department of
16 Commerce to the Governor after a thorough evaluation of selected
17 projects or facilities. The Director of the Oklahoma Department of
18 Commerce shall only recommend expenditures that the Director
19 determines are expected to result in a net economic benefit to the
20 state through the following:

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

23 2. The maintenance of existing jobs which are at a risk for
24 termination;

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

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

5 F. The Oklahoma Department of Commerce shall develop rules for
6 the process of reviewing proposed expenditures from the Oklahoma
7 Quick Action Closing Fund and for the determination of whether or
8 not proposed expenditures meet the criteria identified in subsection
9 E of this section. Criteria shall include requirements for economic
10 impact, local participation in the project, capital investment and
11 average wage thresholds.

12 G. Upon receipt of an evaluation that recommends an expenditure
13 from the Oklahoma Quick Action Closing Fund from the Director of the
14 Oklahoma Department of Commerce, the Governor shall provide the
15 evaluation and recommendation to the President Pro Tempore of the
16 State Senate and the Speaker of the Oklahoma House of
17 Representatives before giving final approval for the expenditure on
18 the project. The Executive Office of the Governor shall recommend
19 final approval of an expenditure on a project pursuant to
20 consultation with the President Pro Tempore of the State Senate and
21 the Speaker of the Oklahoma House of Representatives.

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

3 1. The total amount of funds awarded;

4 2. The performance conditions that must be met to obtain the
5 award, including, but not limited to, net new employment in the
6 state, average salary, and total capital investment;

7 3. If appropriate, a baseline of current service and measure of
8 enhanced capability;

9 4. The methodology of validating performance; and

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

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

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

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

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

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

7 b. share with the state a proportionate amount of any
8 profit realized from the sale.

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-11 - DO PASS,
19 As Amended.

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