

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB1953**

By: McNiel of the House and Mazzei of the Senate

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

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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 \_\_\_\_\_

HB1953 CCR A  
**HOUSE CONFEREES**

Dank

David M. Dank

Key

Dan Kirby

Kirby

McDaniel (Randy)

Randy McDaniel

McNiel

Skye McDaniel

Morrisette

Richard Morrisette

Mulready

John Mulready

Ortega

Carlos Ortega

Ownbey

Pat Ownbey

Pittman

\_\_\_\_\_

Shelton

\_\_\_\_\_

**SENATE CONFEREES**

Ballenger	_____
Branan	_____
Brinkley	_____
Burrage	_____
Crain	_____
Ford	_____
Halligan	_____
Ivester	_____
Jolley	_____
Justice	_____
Marlatt	_____
Mazzei	_____
Myers	_____
Newberry	_____
Nichols	_____
Paddack	_____
Rice	_____
Stanislowski	_____
Sykes	_____
Wilson	_____
Wyrick	_____
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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: McNiel, Pittman and Kirby  
of the House

and

Mazzei of the Senate

7  
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  
24

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  
24



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;  
24

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:  
24

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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