

1 ENGROSSED SENATE
2 BILL NO. 977

By: Sharp of the Senate

3 and

4 Echols of the House

5
6 An Act relating to public finance; amending 62 O.S.
7 2011, Section 891.12, which relates to the Oklahoma
8 Community Economic Development Pooled Finance Act;
9 updating references; modifying prohibition against
10 simultaneous participation in specified incentive
11 programs; authorizing participation in specified
12 incentive programs if certain conditions are met;
13 requiring certain agreement and specifying contents
14 thereof; and declaring an emergency.

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

16 SECTION 1. AMENDATORY 62 O.S. 2011, Section 891.12, is
17 amended to read as follows:

18 Section 891.12. A. As used in this section:

19 1. "Estimated direct state benefits" means the tax revenues
20 projected by the Oklahoma Department of Commerce to accrue to the
21 state as a result of new direct jobs;

22 2. "Estimated indirect state benefits" means the indirect new
23 tax revenues projected by the Oklahoma Department of Commerce to
24 accrue to the state, including, but not limited to, revenue
generated from ancillary support jobs directly related to the
primary business;

1 3. "Estimated direct state costs" means the costs projected by
2 the Department to accrue to the state as a result of new direct
3 jobs. Such costs shall include, but not be limited to:

4 a. the costs of education of new state resident children,

5 b. the costs of public health, public safety and
6 transportation services to be provided to new state
7 residents,

8 c. the costs of other state services to be provided to
9 new state residents, and

10 d. the costs of other state services; and

11 4. "Estimated indirect state costs" means the costs projected
12 by the Department to accrue to the state as a result of new indirect
13 jobs. Such costs shall include, but not be limited to, costs
14 enumerated in subparagraphs a, b, c and d of paragraph 3 of this
15 subsection.

16 B. A for-profit business entity that would otherwise qualify to
17 receive or benefit from proceeds from the issuance of obligations by
18 the Authority from the Economic Development Pool shall be required
19 to obtain a determination letter from the Oklahoma Department of
20 Commerce that the business activity of the entity will result in a
21 positive net benefit rate, to be computed by the Department of
22 Commerce using a methodology which provides for the analysis of
23 estimated direct state benefits, estimated indirect state benefits,
24 estimated direct state costs and estimated indirect state costs.

1 The Oklahoma Department of Commerce shall use such information as it
2 determines to be relevant for the analysis required by this
3 subsection including, but not limited to, the type of business
4 activity in which the entity is engaged or will be engaged, amount
5 of capital investment, type of assets acquired or utilized by the
6 business entity, economic effect of the business activity within the
7 relevant geographic region and such other factors as the Department
8 determines to be relevant. The Oklahoma Department of Commerce may
9 use information regarding the business entity alone or in
10 conjunction with relevant information regarding other business
11 activity in a geographically relevant area surrounding the principal
12 business location of the primary business entity in order to perform
13 the computation of the net benefit rate. If the result of the
14 analysis is a positive net benefit rate, the business entity shall
15 be allowed to capture withholding taxes associated with new jobs or
16 with existing jobs as otherwise provided by ~~this act~~ the Oklahoma
17 Community Economic Development Pooled Finance Act. The Oklahoma
18 Department of Commerce shall transmit a determination letter to the
19 authorized representative of the business entity and shall also
20 transmit a copy of the determination letter to the Oklahoma Tax
21 Commission and to the Oklahoma Development Finance Authority,
22 regardless of whether the result is a positive or negative net
23 benefit rate. The Oklahoma Development Finance Authority shall not
24 allow a business entity to use captured withholding tax revenues for

1 purposes of any pooled financing otherwise authorized by ~~this act~~
2 the Oklahoma Community Economic Development Pooled Finance Act
3 unless the Oklahoma Department of Commerce has previously
4 transmitted a determination letter that reveals a positive net
5 benefit rate for the business entity.

6 C. Any for-profit business entity that receives proceeds from
7 the issuance of any obligations by the Authority from the Economic
8 Development Pool may be required by the applicable local government
9 entity to enter into such agreements as may be required between the
10 entity, the local government entity, the Authority and the Oklahoma
11 Tax Commission to provide for the segregation of withholding taxes
12 attributable to new direct jobs created or existing payroll retained
13 by the for-profit business entity in connection with the asset or
14 assets acquired, constructed or improved with such proceeds.

15 D. The amount of withholding taxes subject to the provisions of
16 this section shall, together with other revenue sources or
17 commitments and undertakings by the for-profit business entity or
18 third parties, be sufficient to make payment of any required
19 principal, interest, adequate reserves or other authorized costs for
20 the borrowing by the Authority.

21 E. The Authority shall have such power of approval regarding
22 the amount and duration of withholding tax segregation pursuant to
23 the provisions of this section in order to ensure payment of its
24 obligations and to promote the marketability of such obligations.

1 F. The Authority shall obtain information from the for-profit
2 business entity as may be required in order to determine the
3 necessary amount of segregated withholding taxes attributable to new
4 direct jobs or existing payroll.

5 G. The Oklahoma Tax Commission shall determine with respect to
6 the withholding taxes attributable to the income of employees
7 engaged in new direct jobs or existing jobs for a for-profit
8 business entity participating in a pooled financing pursuant to the
9 Oklahoma Community Economic Development Pooled Finance Act the
10 amount of such withholding taxes required to be deposited to the
11 credit of the Community Economic Development Pooled Finance
12 Revolving Fund.

13 H. The Oklahoma Tax Commission shall make a deposit in the
14 Community Economic Development Pooled Finance Revolving Fund in
15 accordance with any applicable agreement entered into by a for-
16 profit business entity participating in a pooled financing pursuant
17 to the Oklahoma Community Economic Development Pooled Finance Act.

18 I. No for-profit business entity that benefits from proceeds of
19 obligations issued by the Authority from the Economic Development
20 Pool may receive or continue to receive incentive payments pursuant
21 to the Oklahoma Quality Jobs Program Act ~~or claim any investment tax~~
22 ~~credits otherwise authorized pursuant to Section 2357.4 of Title 68~~
23 ~~of the Oklahoma Statutes~~ during the period of time that any
24 withholding taxes attributable to the payroll of such entity are

1 being paid to the Community Economic Development Pooled Finance
2 Revolving Fund or in any manner used for the payment of principal,
3 interest or other costs associated with any obligations issued by
4 the Authority pursuant to the provisions of ~~this act~~ the Oklahoma
5 Community Economic Development Pooled Finance Act.

6 J. A for-profit business entity that benefits from proceeds of
7 obligations issued by the Oklahoma Development Finance Authority
8 from the Economic Development Pool may claim investment tax credits
9 otherwise authorized pursuant to Section 2357.4 of Title 68 of the
10 Oklahoma Statutes during the period of time that any withholding
11 taxes attributable to the payroll of such entity are being paid to
12 the Community Economic Development Pooled Finance Revolving Fund if
13 the business entity meets the following requirements on or after the
14 effective date of this act:

15 1. Makes a capital investment of no less than Five Hundred
16 Million Dollars (\$500,000,000.00); and

17 2. Creates two thousand five hundred (2,500) new direct jobs.

18 K. Upon approval by the Authority pursuant to subsection J of
19 this section, the Oklahoma Development Finance Authority and the
20 Oklahoma Department of Commerce shall enter into an agreement with
21 the company that sets forth the conditions for payment of monies
22 from the Community Economic Development Pooled Finance Revolving
23 Fund. The agreement must include:

24 1. The total amount of funds and tax credits awarded;

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

4 3. If appropriate, a baseline of current service and measure of
5 enhanced capability;

6 4. The methodology of validating performance;

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

9 6. A requirement that no monies paid from the Community
10 Economic Development Pooled Finance Revolving Fund shall be used by
11 a recipient or any other person or entity for purposes of any
12 political contribution to or on behalf of any candidate or for the
13 support of or opposition to any measure including, but not limited
14 to, an initiative petition or referendum.

15 SECTION 2. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

1 Passed the Senate the 14th day of March, 2018.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2018.

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8 _____
9 Presiding Officer of the House
10 of Representatives