SENATE FLOOR VERSION
April 12, 2017
AS AMENDED

ENGROSSED HOUSE
BILL NO. 2131

By: Echols and Hall of the House

and

Treat, Holt and Matthews of the Senate

[state government - Oklahoma Tourism Development Act - codification - effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2391 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Tourism Development Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2392 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby finds:

1. That the general welfare and material well-being of the citizens of the State of Oklahoma depend, in large measure, upon the development of tourism attractions in this state;

2. That it is in the best interests of the citizens of this state to induce the creation of new or the expansion of existing tourism attractions within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the inducements to be offered by this state to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by this state;

3. That the authority prescribed by this act, and the purposes to be accomplished under the provisions of this act, are proper governmental and public purposes for which public funds may be expended; and

4. That the inducement of the creation or expansion of tourism attraction projects is of paramount importance, mandating that the provisions of this act be liberally construed and applied in order to advance public purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2393 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Tourism Development Act:

1. "Agreement" means an agreement entered into pursuant to Section 6 of this act, by and between the Executive Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project;

2. "Approved company" means any eligible company that is seeking to undertake a tourism attraction project and is approved by the Executive Director pursuant to Sections 5 and 6 of this act;

3. "Approved costs" means:

a. obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project,

b. the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto,

c. the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project which are not paid by the vendor, supplier or contractor, or otherwise provided,

d. all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project,

e. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project,

f. all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

g. all other costs comparable with those described in this paragraph;

4. "Director" means the Executive Director of the Oklahoma Tourism and Recreation Department or the Executive Director's designated representative;

5. "Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project, whether owned or leased, within this state that meets the standards promulgated by the Executive Director pursuant to Section 4 of this act;

6. "Final approval" means the action taken by the Executive Director authorizing the eligible company to receive inducements under Section 7 of this act;

7. "Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourist attraction which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification;

8. "Inducements" means the sales tax credit as prescribed in Section 7 of this act;

9. "Preliminary approval" means the action taken by the Executive Director conditioned upon final approval by the Executive Director upon satisfaction by the eligible company of the requirements of this act;

10. a. "Tourism attraction" means:

(1) a cultural or historical site,

(2) a recreational or entertainment facility,

(3) an area of natural phenomena or scenic beauty,

(4) a theme park,

(5) an amusement or entertainment park,

(6) an indoor or outdoor play or music show,

(7) a botanical garden,

(8) a cultural or educational center, or

(9) a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination for tourists.

b. A tourism attraction shall not include:

(1) lodging facilities, unless:

(a) the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project, or

(b) the lodging facilities are a part of a destination hotel,

(2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project,

(3) facilities that are not open to the general public,

(4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in

commercial lodging at or near the tourism attraction project,

(5) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under the Oklahoma Horse Racing Act, Sections 200 through 209 of Title 3A of the Oklahoma Statutes, shall be a tourism attraction for purposes of this act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

11. "Tourism attraction project" or "project" means:

a. the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction and equipping of a tourism attraction, and

b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction and installation of a tourism attraction, including, but not limited to:

(1) surveys, and

(2) installation of utilities, which may include:

(a) water, sewer, sewage treatment, gas, electricity, communications and similar facilities, and

(b) off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2394 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Executive Director of the Oklahoma Tourism and Recreation Department, with approval of the Oklahoma Tourism and Recreation Commission, shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. With respect to each eligible company making an application to the Executive Director for inducements, and with respect to the tourism attraction described in the application, the Executive

Director shall make inquiries and request materials of the applicant that shall include, but shall not be limited to:

1. Marketing plans for the project that target individuals who are not residents of this state;

2. A description and location of the project;

3. Capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed the minimum amount set forth in subsection C of this section and the anticipated sources of funding therefor;

4. The anticipated employment and wages to be paid at the project;

5. Business plans which indicate the average number of days in a year in which the project will be in operation and open to the public, if applicable; and

6. The anticipated revenues and expenses generated by the project.

Based upon a review of these materials, if the Executive Director determines that the eligible company and the tourism attraction may reasonably be expected to satisfy the criteria for final approval in subsection C of this section, then the Executive Director may consider granting a preliminary approval of the eligible company and the tourism attraction project pursuant to subsection B of Section 5 of the Oklahoma Tourism Development Act.

C. For a tourism attraction project, after granting a preliminary approval, the Executive Director shall engage the services of a competent consulting firm which shall submit to the Executive Director a report analyzing the data made available by the eligible company and which shall collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project will:

1. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of this state;

2. Have costs in excess of Five Hundred Thousand Dollars ($500,000.00);

3. Have a significant and positive economic impact on this state considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in this state, and the extent to which the tourism attraction project will be revenue-neutral to the State of Oklahoma, meaning the amount by which increased tax revenues from the tourism attraction project will exceed the sales tax credit allowed pursuant to Section 7 of this act;

4. Produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis; and

5. Not adversely affect existing employment in this state.

D. The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make a determination pursuant to this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2395 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Executive Director of the Oklahoma Tourism and Recreation Department, with the approval of the Oklahoma Tourism and Recreation Commission, shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of rules in accordance with the Administrative Procedures Act.

B. The Executive Director may give preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.

C. The Executive Director shall review the report of the consultant prepared pursuant to subsection C of Section 4 of the Oklahoma Tourism Development Act and other information that has been made available to the Executive Director in order to assist the Executive Director in determining whether the tourism attraction project will further the purposes of this act.

D. The criteria for final approval of eligible companies and tourism attraction projects shall include, but shall not be limited to, the criteria set forth in subsection C of Section 4 of this act.

E. After a review of the relevant materials, the consultant's report, other information made available to the Executive Director, and completion of other inquiries, the Executive Director may give final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. The decision reached by the Executive Director may be appealed by the eligible company to the Tourism and Recreation Commission. The decision of the Tourism and Recreation Commission shall constitute the final administrative decision of the Oklahoma Tourism and Recreation Department.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2396 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon granting final approval, the Executive Director of the Oklahoma Tourism and Recreation Department may enter into an agreement with an approved company with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but shall not be limited to:

1. The amount of approved costs, which shall be determined by negotiations between the Executive Director and the approved company;

2. A date certain by which the approved company shall have completed the tourism attraction project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs by an independent certified public accountant acceptable to the Executive Director; and

3. The following provisions:

a. the term of the agreement shall be ten (10) years from the later of:

(1) the date of the final approval of the tourism attraction project, or

(2) the completion date specified in the agreement, if the completion date is within two (2) years of the date of the final approval of the tourism attraction project. However, the term of the agreement may be extended for up to two (2) additional years by the Executive Director, with the advice and consent of the Oklahoma Tax Commission, if the Executive Director determines that the failure to complete the tourism attraction project within two (2) years resulted from:

(a) unanticipated and unavoidable delay in the construction of the tourism attraction project,

(b) an original completion date for the tourism attraction project, as originally planned, which will be more than two (2) years from the date construction began, or

(c) a change in business structure resulting from a merger or acquisition,

b. in any tax year during which an agreement is in effect, if the amount of sales tax to be remitted by the approved company exceeds the sales tax credit available to the approved company, then the approved company shall pay the excess to this state as sales tax,

c. within forty-five (45) days after the end of each calendar year the approved company shall supply the Executive Director with such reports and certifications as the Executive Director may request demonstrating to the satisfaction of the Executive Director that the approved company is in compliance with the provisions of the Oklahoma Tourism Development Act, and

d. the approved company shall not receive an inducement with respect to any calendar year if:

(1) in any calendar year following the fourth year of the agreement, the tourism attraction project fails to attract at least fifteen percent (15%) of its visitors from among persons who are not residents of this state, or

(2) in any calendar year following the first year of the project or the tourism attraction project is not operating and open to the public on a regular and consistent basis.

B. The agreement shall not be transferable or assignable by the approved company without the written consent of the Executive Director.

C. If the approved company utilizes inducements which are subsequently disallowed then the approved company will be liable for the payment to the Tax Commission of all taxes resulting from the disallowance of the inducements plus applicable penalties and interest.

D. The Executive Director shall provide a copy of each agreement entered into with an approved company to the Tax Commission.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2397 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon receiving notification from the Executive Director of the Oklahoma Tourism and Recreation Department that an approved company has entered into a tourism project agreement and is entitled to the inducements provided by the Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall provide the approved company with forms and instructions as necessary to claim those inducements.

B. An approved company whose agreement provides that it shall expend approved costs of more than Five Hundred Thousand Dollars ($500,000.00) for a tourism attraction project but less than One Million Dollars ($1,000,000.00) shall be entitled to a sales tax credit if the company certifies to the Tax Commission that it has expended at least the minimum amount in approved costs, and the Executive Director certifies that the approved company is in compliance with this act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting a sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the Tax Commission. Subsequent requests for credit for additional certified approved costs in excess of the minimum amount for each project as listed in this subsection but less than

One Million Dollars ($1,000,000.00) shall result in a sales tax credit in the amount of up to ten percent (10%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the Tax Commission. Sales tax credits allowed pursuant to the provisions of this act shall not be transferable or assignable.

An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars ($1,000,000.00) shall be entitled to a sales tax credit if the company certifies to the Tax Commission that it has expended at least One Million Dollars ($1,000,000.00) in approved costs and the Executive Director certifies that the approved company is in compliance with this act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting a sales tax credit in the amount of up to twenty-five percent (25%) of the approved costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the Tax Commission. The credit on all subsequent additional certified approved costs shall be in the amount of up to twenty-five percent (25%) of the costs, but limited to the percent of the approved costs that will result in the project being revenue-neutral to the State of Oklahoma as determined by the Tax Commission. The cumulative credits provided pursuant to this act shall not exceed Fifteen Million Dollars ($15,000,000.00) per year.

The Tax Commission shall require proof of expenditures prior to issuing a tax credit memorandum to the approved company which may be satisfied by a report from an independent certified public accountant. Additional credit memoranda may be issued as the approved company certifies additional expenditures of approved costs.

No tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the Executive Director and the approved company. However, the Executive Director, with the advice and consent of the Tax Commission, may authorize tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the Executive Director determines that the failure to complete the tourism attraction project within two (2) years resulted from:

1. Unanticipated and unavoidable delay in the construction of the tourism attraction;

2. An original completion date for the tourism attraction, as originally planned, which will be more than two (2) years from the date construction began; or

3. A change in business ownership or business structure resulting from a merger or acquisition.

C. A sales tax credit allowed pursuant to the provisions of this section may be used to offset a portion of the reported state sales tax liability of the approved company for all sales tax reporting periods following the issuance of the credit memorandum subject to the following limitations:

1. Only increased state sales tax liability may be offset by the issued credit;

2. An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars ($1,000,000.00) shall be entitled to use only ten percent (10%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year, and an approved company whose agreement provides that it shall expend approved costs of more than the minimum amount for each project as listed in this subsection but less than One Million Dollars ($1,000,000.00) shall be entitled to use only twenty percent (20%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year; and

3. All issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in Section 6 of the Oklahoma Tourism Development Act.

The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

D. The Tax Commission shall promulgate rules as are necessary for the proper administration of the Oklahoma Tourism Development Act. The Tax Commission may also develop forms and instructions as necessary for an approved company to claim the sales tax credit provided by this act.

E. The Tax Commission shall have the authority to obtain any information necessary from the approved company and the Executive Director to verify that approved companies have received the proper amounts of tax credits as authorized by this act. The Oklahoma Tax Commission shall demand the repayment of any credits taken in excess of the credit allowed by this act.

F. No sales tax credit authorized by this section shall be granted on or after January 1, 2021. Notwithstanding the foregoing, an approved company that has entered into a tourism attraction project agreement with the Tourism and Recreation Department pursuant to Section 6 of this act prior to January 1, 2021, shall continue to be entitled to claim any sales tax credit authorized by this section as contemplated by the tourism project agreement.

SECTION 8. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
April 12, 2017 - DO PASS AS AMENDED