

1 ENGROSSED SENATE
2 BILL NO. 840

By: Bice of the Senate

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4 Fetgatter of the House

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6 An Act relating to public finance; amending 62 O.S.
7 2011, Section 48.2, as last amended by Section 1,
8 Chapter 144, O.S.L. 2018 (62 O.S. Supp. 2018, Section
9 48.2), which relates to the Oklahoma Quick Action
10 Closing Fund; establishing minimum wage threshold for
11 qualifying establishments; modifying termination
date; providing an effective date; and declaring an
emergency.

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

13 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as
14 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.
15 2018, Section 48.2), is amended to read as follows:

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

- 21 1. All monies apportioned or allocated to the fund pursuant to
22 law;
- 23 2. Any amounts appropriated by the Legislature to the fund;
- 24 3. Interest earned on the investment of money in the fund;

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

2 and

3 5. Five percent (5%) of all funds paid by the Tax Commission to
4 establishments that execute contracts for payment of incentives
5 pursuant to the Oklahoma Quality Jobs Program Act and the 21st
6 Century Quality Jobs Incentive Act if the contract is executed on or
7 after ~~the effective date of this act~~ August 2, 2018.

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

18 C. In order to qualify for any funds from the Oklahoma Quick
19 Action Closing Fund, the establishment making application shall ~~be~~
20 engaged:

21 1. Be engaged in a business activity described by a North
22 American Industry Classification System (NAICS) Code used to define
23 eligibility for incentive payments from the Oklahoma Quality Jobs
24 Program Act as defined in Section 3603 of Title 68 of the Oklahoma

1 Statutes or a business activity described by Section 3603 of Title
2 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
3 to define eligibility for incentive payments from the 21st Century
4 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
5 of the Oklahoma Statutes; and

6 2. Be required to pay new jobs for which an application is
7 being made an average annualized wage which exceeds the average
8 county wage as that percentage is determined by the Department of
9 Commerce based upon the most recent U.S. Department of Commerce data
10 for the county in which the new jobs are located. For purposes of
11 this paragraph, health care premiums paid by the applicant for
12 individuals in new jobs shall not be included in the annualized
13 wage.

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
24

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;
- 10 5. The schedule of payments from the fund, and claw-back
11 provisions for failure to meet performance conditions; and
- 12 6. A requirement that no monies paid from the Oklahoma Quick
13 Action Closing Fund shall be used by a recipient or any other person
14 or entity for purposes of any political contribution to or on behalf
15 of any candidate or for the support of or opposition to any measure
16 including but not limited to an initiative petition or referendum.

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

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

3 1. The funds used for the capital improvement shall be deemed
4 to be held in trust for the benefit of the state and shall be
5 considered as a priority claim for purposes of federal bankruptcy
6 law; and

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

9 a. repay the state the money awarded to pay for the
10 capital improvement, with interest at the rate and
11 according to the other terms provided by the
12 agreement, and

13 b. share with the state a proportionate amount of any
14 profit realized from the sale.

15 K. If, as of the date certain provided in the agreement, the
16 award recipient has not used monies awarded for the intended
17 purposes, the recipient shall repay that amount and any related
18 interest to the state at the agreed rate and on the agreed terms and
19 any such amounts shall be deemed to be held in trust for the benefit
20 of the state and shall be considered as a priority claim for
21 purposes of federal bankruptcy law.

22 L. The provisions of this act shall cease to have the force and
23 effect of law on ~~the July 1 date of the sixth fiscal year after the~~
24 ~~first fiscal year for which any funds are deposited to, appropriated~~

1 ~~to, apportioned to or otherwise transferred to the Oklahoma Quick~~
2 ~~Action Closing Fund July 1, 2024.~~

3 SECTION 2. This act shall become effective July 1, 2019.

4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 Passed the Senate the 13th day of March, 2019.

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10 _____
11 Presiding Officer of the Senate

12 Passed the House of Representatives the ____ day of _____,
13 2019.

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16 Presiding Officer of the House
17 of Representatives
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