

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 840

By: Bice of the Senate

and

Fetgatter of the House

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9 An Act relating to public finance; amending 62 O.S.
10 2011, Section 48.2, as last amended by Section 1,
11 Chapter 144, O.S.L. 2018 (62 O.S. Supp. 2018, Section
12 48.2), which relates to the Oklahoma Quick Action
13 Closing Fund; establishing minimum wage threshold for
14 qualifying establishments; modifying termination
15 date; providing an effective date; and declaring an
16 emergency.

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

18 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as
19 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.
20 2018, Section 48.2), is amended to read as follows:

21 Section 48.2. A. There is hereby created in the State Treasury
22 a revolving fund for the Oklahoma Department of Commerce to be
23 designated the Oklahoma Quick Action Closing Fund. The fund shall
24 be a continuing fund, not subject to fiscal year limitations and
25 shall consist of:

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;

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

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

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

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

1 1. Be engaged in a business activity described by a North
2 American Industry Classification System (NAICS) Code used to define
3 eligibility for incentive payments from the Oklahoma Quality Jobs
4 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
5 Statutes or a business activity described by Section 3603 of Title
6 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
7 to define eligibility for incentive payments from the 21st Century
8 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
9 of the Oklahoma Statutes; and

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

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

23 1. The number of jobs to be created by a new business
24 establishment;

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

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

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

7 5. The total capital investment to be made by the business
8 establishment;

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

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

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

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

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

3 2. The maintenance of existing jobs which are at a risk for
4 termination;

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

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

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

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

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

7 1. The total amount of funds awarded;

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

11 3. If appropriate, a baseline of current service and measure of
12 enhanced capability;

13 4. The methodology of validating performance;

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

16 6. A requirement that no monies paid from the Oklahoma Quick
17 Action Closing Fund shall be used by a recipient or any other person
18 or entity for purposes of any political contribution to or on behalf
19 of any candidate or for the support of or opposition to any measure
20 including but not limited to an initiative petition or referendum.

21 I. The Department of Commerce shall make available on its
22 website or other website dedicated for this purpose a complete
23 disclosure of all payments made from the Oklahoma Quick Action
24 Closing Fund. The disclosure shall include a description of the

1 expenditures made by the business establishment with the payments
2 made from the fund. No proprietary information of the business
3 establishment shall be subject to the requirements of this
4 subsection.

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

7 1. The funds used for the capital improvement shall be deemed
8 to be held in trust for the benefit of the state and shall be
9 considered as a priority claim for purposes of federal bankruptcy
10 law; and

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

13 a. repay the state the money awarded to pay for the
14 capital improvement, with interest at the rate and
15 according to the other terms provided by the
16 agreement, and

17 b. share with the state a proportionate amount of any
18 profit realized from the sale.

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

3 L. The provisions of this act shall cease to have the force and
4 effect of law on ~~the July 1 date of the sixth fiscal year after the~~
5 ~~first fiscal year for which any funds are deposited to, appropriated~~
6 ~~to, apportioned to or otherwise transferred to the Oklahoma Quick~~
7 ~~Action Closing Fund~~ July 1, 2024.

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

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

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14 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
15 04/10/2019 - DO PASS.
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