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February 18, 2020

AS AMENDED

SENATE BILL NO. 1387

By: Bergstrom

[Oklahoma Community Economic Development Pooled Finance Act - tax and duties - effective date]

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

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

Section 891.12. A. As used in this section:

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

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

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

- a. the costs of education of new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services; and

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

B. A for-profit business entity that would otherwise qualify to receive or benefit from proceeds from the issuance of obligations by the Authority from the Economic Development Pool shall be required to obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate, to be computed by the Department of Commerce using a methodology which provides for the analysis of estimated direct state benefits, estimated indirect state benefits, estimated direct state costs and estimated indirect state costs. The Oklahoma Department of Commerce shall use such information as it determines to be relevant for the analysis required by this subsection including, but not limited to, the type of business

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

1 transmitted a determination letter that reveals a positive net
2 benefit rate for the business entity.

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

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

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

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

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

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

16 I. No for-profit business entity that benefits from proceeds of
17 obligations issued by the Authority from the Economic Development
18 Pool may receive or continue to receive incentive payments pursuant
19 to the Oklahoma Quality Jobs Program Act or claim any investment tax
20 credits otherwise authorized pursuant to Section 2357.4 of Title 68
21 of the Oklahoma Statutes during the period of time that any
22 withholding taxes attributable to the payroll of such entity are
23 being paid to the Community Economic Development Pooled Finance
24 Revolving Fund or in any manner used for the payment of principal,

1 interest or other costs associated with any obligations issued by
2 the Authority pursuant to the provisions of ~~this act~~ the Oklahoma
3 Community Economic Development Pooled Finance Act.

4 J. In the event a for-profit business entity participating in
5 pooled financing pursuant to the Oklahoma Economic Development
6 Pooled Finance Act ends operations in this state prior to the end of
7 the expected repayment period, the business shall repay all
8 withholding tax captured pursuant to this section during the period
9 of operation.

10 SECTION 2. AMENDATORY Section 4, Chapter 260, O.S.L.
11 2019 (62 O.S. Supp. 2019, Section 891.17), is amended to read as
12 follows:

13 Section 891.17. A. The Oklahoma Department of Commerce shall
14 promulgate rules for purposes of establishing criteria for the
15 funding of authorized infrastructure projects from the proceeds of
16 obligations issued by the Oklahoma Development Finance Authority for
17 the Public-Private Partner Development Pool.

18 B. The Department shall establish a scoring system to evaluate
19 projects to be financed from the proceeds of obligations issued by
20 the Authority for the Public-Private Partner Development Pool.

21 C. The scoring system shall include, but shall not be limited
22 to, analysis of:

23 1. Capital investment by one or more for-profit business
24 entities and/or federal government defense entities;

1 2. Additional capital investment by one or more local
2 government entities;

3 3. New direct jobs as defined by Section 3603 of Title 68 of
4 the Oklahoma Statutes, to be created by a for-profit business entity
5 or entities;

6 4. Salary and wage payments to persons employed in new direct
7 jobs; and

8 5. The likelihood of additional business location decisions
9 resulting from the activity of the for-profit business entity or
10 entities that would benefit from use of the Public-Private Partner
11 Development Pool.

12 D. One or more eligible local government entities shall apply
13 to the Department for approval of a pooled financing for an
14 infrastructure project on such forms as the Department may
15 prescribe.

16 E. The Department shall compile and maintain a prioritized list
17 of infrastructure projects eligible for pooled financing through the
18 Authority.

19 F. The Authority shall use the prioritized list provided by the
20 Department in order to provide financing to the eligible local
21 government entities in conjunction with one or more for-profit
22 business entity or entities for infrastructure development.

23 G. The Authority shall, within the limit on available bond
24 proceeds in the Development Infrastructure Pool, provide proceeds in

1 accordance with the scoring system established by the Department
2 pursuant to this section.

3 H. The Department shall establish regular reporting
4 requirements for determining the costs, benefits, awards made, award
5 recipients and effectiveness of the Oklahoma Economic Development
6 Pooled Finance Act including, but not limited to, whether the goals
7 of attracting private business, job creation and developing public
8 infrastructure have been met.

9 SECTION 3. This act shall become effective November 1, 2020.

10 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
11 February 18, 2020 - DO PASS AS AMENDED
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