

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 840

By: Bice

AS INTRODUCED

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

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

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

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

1. All monies apportioned or allocated to the fund pursuant to law;

2. Any amounts appropriated by the Legislature to the fund;

1        3. Interest earned on the investment of money in the fund;

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

3 and

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

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

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

22        1. Be engaged in a business activity described by a North  
23 American Industry Classification System (NAICS) Code used to define  
24 eligibility for incentive payments from the Oklahoma Quality Jobs  
25

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

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

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

20 1. The number of jobs to be created by a new business  
21 establishment;

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

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

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

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

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

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

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

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

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

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

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

5        4. Additional revenues in either ad valorem, income or sales  
6 and use taxes.

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

14        G. Upon receipt of an evaluation that recommends an expenditure  
15 from the Oklahoma Quick Action Closing Fund from the Director of the  
16 Oklahoma Department of Commerce, the Governor shall provide the  
17 evaluation and recommendation to the President Pro Tempore of the  
18 State Senate and the Speaker of the Oklahoma House of  
19 Representatives before giving final approval for the expenditure on  
20 the project. The Executive Office of the Governor shall recommend  
21 final approval of an expenditure on a project pursuant to  
22 consultation with the President Pro Tempore of the State Senate and  
23 the Speaker of the Oklahoma House of Representatives.  
24

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

5 1. The total amount of funds awarded;

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

9 3. If appropriate, a baseline of current service and measure of  
10 enhanced capability;

11 4. The methodology of validating performance;

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

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

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

1 establishment shall be subject to the requirements of this  
2 subsection.

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

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

9 2. If the capital improvement is sold, the recipient of the  
10 award shall:

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

15 b. share with the state a proportionate amount of any  
16 profit realized from the sale.

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

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

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

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

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