

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1387

By: Bergstrom

6 AS INTRODUCED

7 An Act relating to the Oklahoma Community Economic  
8 Development Pooled Finance Act; amending 62 O.S.  
9 2011, Sections 891.12 and Section 4, Chapter 260,  
10 O.S.L. 2019 (62 O.S. Supp. 2019, Section 891.17),  
11 which relate to withholding tax and duties; requiring  
12 certain businesses to repay withholding tax under  
13 specified circumstances; directing establishment of  
14 rules for reporting data; updating statutory  
15 references; and providing an effective date.

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

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

17 Section 891.12. A. As used in this section:

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

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

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

- 6 a. the costs of education of new state resident children,
- 7 b. the costs of public health, public safety and  
8 transportation services to be provided to new state  
9 residents,
- 10 c. the costs of other state services to be provided to  
11 new state residents, and
- 12 d. the costs of other state services; and

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

18 B. A for-profit business entity that would otherwise qualify to  
19 receive or benefit from proceeds from the issuance of obligations by  
20 the Authority from the Economic Development Pool shall be required  
21 to obtain a determination letter from the Oklahoma Department of  
22 Commerce that the business activity of the entity will result in a  
23 positive net benefit rate, to be computed by the Department of  
24 Commerce using a methodology which provides for the analysis of  
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1 estimated direct state benefits, estimated indirect state benefits,  
2 estimated direct state costs and estimated indirect state costs.  
3 The Oklahoma Department of Commerce shall use such information as it  
4 determines to be relevant for the analysis required by this  
5 subsection including, but not limited to, the type of business  
6 activity in which the entity is engaged or will be engaged, amount  
7 of capital investment, type of assets acquired or utilized by the  
8 business entity, economic effect of the business activity within the  
9 relevant geographic region and such other factors as the Department  
10 determines to be relevant. The Oklahoma Department of Commerce may  
11 use information regarding the business entity alone or in  
12 conjunction with relevant information regarding other business  
13 activity in a geographically relevant area surrounding the principal  
14 business location of the primary business entity in order to perform  
15 the computation of the net benefit rate. If the result of the  
16 analysis is a positive net benefit rate, the business entity shall  
17 be allowed to capture withholding taxes associated with new jobs or  
18 with existing jobs as otherwise provided by ~~this act~~ the Oklahoma  
19 Community Economic Development Pooled Finance Act. The Oklahoma  
20 Department of Commerce shall transmit a determination letter to the  
21 authorized representative of the business entity and shall also  
22 transmit a copy of the determination letter to the Oklahoma Tax  
23 Commission and to the Oklahoma Development Finance Authority,  
24 regardless of whether the result is a positive or negative net

1 benefit rate. The Oklahoma Development Finance Authority shall not  
2 allow a business entity to use captured withholding tax revenues for  
3 purposes of any pooled financing otherwise authorized by ~~this act~~  
4 the Oklahoma Community Economic Development Pooled Finance Act  
5 unless the Oklahoma Department of Commerce has previously  
6 transmitted a determination letter that reveals a positive net  
7 benefit rate for the business entity.

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

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

23 E. The Authority shall have such power of approval regarding  
24 the amount and duration of withholding tax segregation pursuant to  
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1 the provisions of this section in order to ensure payment of its  
2 obligations and to promote the marketability of such obligations.

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

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

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

20 I. No for-profit business entity that benefits from proceeds of  
21 obligations issued by the Authority from the Economic Development  
22 Pool may receive or continue to receive incentive payments pursuant  
23 to the Oklahoma Quality Jobs Program Act or claim any investment tax  
24 credits otherwise authorized pursuant to Section 2357.4 of Title 68

1 of the Oklahoma Statutes during the period of time that any  
2 withholding taxes attributable to the payroll of such entity are  
3 being paid to the Community Economic Development Pooled Finance  
4 Revolving Fund or in any manner used for the payment of principal,  
5 interest or other costs associated with any obligations issued by  
6 the Authority pursuant to the provisions of ~~this act~~ the Oklahoma  
7 Community Economic Development Pooled Finance Act.

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

14 SECTION 2. AMENDATORY Section 4, Chapter 260, O.S.L.  
15 2019 (62 O.S. Supp. 2019, Section 891.17), is amended to read as  
16 follows:

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

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

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

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

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

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

10 4. Salary and wage payments to persons employed in new direct  
11 jobs; and

12 5. The likelihood of additional business location decisions  
13 resulting from the activity of the for-profit business entity or  
14 entities that would benefit from use of the Public-Private Partner  
15 Development Pool.

16 D. One or more eligible local government entities shall apply  
17 to the Department for approval of a pooled financing for an  
18 infrastructure project on such forms as the Department may  
19 prescribe.

20 E. The Department shall compile and maintain a prioritized list  
21 of infrastructure projects eligible for pooled financing through the  
22 Authority.

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

3 G. The Authority shall, within the limit on available bond  
4 proceeds in the Development Infrastructure Pool, provide proceeds in  
5 accordance with the scoring system established by the Department  
6 pursuant to this section.

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

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

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