

# An Act

ENROLLED HOUSE  
BILL NO. 4455

By: Wallace, Martinez, Mize,  
West (Tammy), McBride,  
Lepak, Dills, Hill,  
Pfeiffer, Baker, Osburn,  
Roberts (Dustin), Kerbs,  
Hilbert, O'Donnell, Lawson,  
Moore, Bush, Boatman,  
Randleman, Townley, McCall,  
and Fetgatter of the House

and

Thompson, Hall, David,  
Coleman, Leewright, Garvin,  
Stanley, and Montgomery of  
the Senate

An Act relating to economic development; creating the Large-scale Economic Activity and Development Act of 2022; declaring legislative findings; defining terms; providing scenario where condition is deemed to exist; creating investment rebate program until a certain date; providing qualifying criteria; providing new job creation thresholds for qualification; providing for reduction of thresholds under certain conditions; providing calculation methodology for reduction; authorizing the aggregation of certain new jobs of subsidiaries toward threshold; assigning administration responsibilities for rebate program; providing annual reporting requirements; authorizing the promulgation of rules; establishing eligibility criteria; establishing different participation at different capital expenditure tiers; limiting conditions where participation may occur at certain tier; requiring certain application submissions and evaluation; disqualifying participation in certain program if participating in rebate program; limiting disqualification; limiting the calculation and

application of certain expenditures; requiring certain notifications to certain agency; authorizing issuances of payments under certain conditions; limiting source of payments; limiting authorization to award payments; providing calculation methodology for certain limitation; providing for ongoing review of eligibility; providing calculation methodology; authorizing payments in multiple years; authorizing pre-qualification and specific accounting procedures; prohibiting allocations, reallocations, payments, encumbrances, pre-encumbrances, and pre-qualifications under certain conditions; creating the Large-scale Economic Activity and Development Fund; establishing fund characteristics; deeming funds appropriated; providing budgeting and expenditure authority, limitations, and procedures; limiting use of funds; providing for transfer of unencumbered funds after certain date; and providing for codification.

SUBJECT: Economic development

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Large-scale Economic Activity and Development Act of 2022" and shall be known and may be cited as the "LEAD Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby finds that it is beneficial to the state and its citizens to provide large-scale enhanced economic development incentives to certain establishments, including, but not limited to, those associated with an industry that creates a substantial number of jobs, as such economic activity results in a greater benefit to the state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Large-scale Economic Activity and Development Act of 2022:

1. "Application" means a submission of detailed information by an establishment that complies with all procedures established by the Oklahoma Department of Commerce related to the format, content, means, and timing of submission. Such submissions shall include, but not be limited to, a capital expenditure plan outlining anticipated annual placements-in-service of qualified property and a job creation plan outlining anticipated annual totals of new direct jobs created;

2. "Available funds" means the total amount of monies identified for deposit in the Large-scale Economic Activity and Development Fund by law, less the cumulative total of all rebate payments, pre-qualified rebate payments, encumbrances, and pre-encumbrances of the Large-scale Economic Activity and Development Fund;

3. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation;

4. "New direct job" means full-time employment, employed by the establishment, which did not exist in this state prior to the date of approval, by the Oklahoma Department of Commerce, of an application made pursuant to this act. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to such approval; and

5. "Qualified capital expenditure" means an expenditure on property in this state after May 1, 2022, depreciable under Internal Revenue Code, 26 U.S.C., Section 168, that has been verified by the Oklahoma Department of Commerce. The cost of property placed in service and expenditures made on behalf of or for the benefit of an establishment by a separate business entity shall be considered an "expenditure" of the establishment for purposes of this definition.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created until July 1, 2032, an investment rebate program for the cost of qualified capital expenditures by establishments which create not less than a threshold number of new direct jobs as provided in this section.

2. a. The threshold number of new direct jobs required for establishments to qualify and remain qualified for investment rebate payments created in paragraph 1 of this subsection shall be as follows:

- (1) five hundred (500) new direct jobs in year one of the rebate payment period,
- (2) one thousand (1,000) cumulative new direct jobs in year two of the rebate payment period,
- (3) two thousand five hundred (2,500) cumulative new direct jobs in year three of the rebate payment period,
- (4) four thousand (4,000) cumulative new direct jobs in year four of the rebate payment period, and
- (5) four thousand (4,000) cumulative new direct jobs in year five of the rebate payment period.

b. For establishments qualifying for investment rebate payments pursuant to division (2) of subparagraph a of paragraph 1 of subsection E of this section, the threshold numbers provided in this paragraph shall be reduced proportionally to reflect the lesser capital expenditure of such establishment. Such reduction shall be achieved by multiplying the thresholds in paragraph 2 of this subsection by a fractional equivalent equal to the following: the capital expenditure plan amount of the establishment qualifying pursuant to division (2) of subparagraph a of paragraph 1 of subsection E of this section, divided by the capital expenditure plan amount of the establishment qualifying pursuant to division (1) of

subparagraph a of paragraph 1 of subsection E of this section.

3. New direct jobs in this state of a subsidiary of a primary establishment, if such subsidiary is defined or classified in the NAICS Manual under Industry Group No. 5132, 5222, or 5413, shall be aggregated with the number of new direct jobs in the state of the primary establishment for the purpose of determining if the thresholds provided in paragraph 2 of this subsection are met.

B. The investment rebate program shall be administered by the Oklahoma Department of Commerce and the Oklahoma Tax Commission.

C. By October 1 of each year, the Oklahoma Department of Commerce shall submit electronically an annual report to the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the Oklahoma State Senate, the Chair of the Appropriations and Budget Committee of the Oklahoma House of Representatives, the Chair of the Appropriations Committee of the Oklahoma State Senate, and the Executive Director of the Legislative Office of Fiscal Transparency detailing the program and investment rebate payments.

D. The Oklahoma Department of Commerce and the Oklahoma Tax Commission may promulgate rules to implement the provisions of this act.

E. To be eligible for consideration for an investment rebate payment awarded under the provisions of this act, a primary establishment shall:

1. a. (1) Submit an application and documentation to the Oklahoma Department of Commerce, as required by the Department, outlining a capital expenditure plan in this state associated with qualified capital expenditures totaling no less than Three Billion Six Hundred Six Million Dollars (\$3,606,000,000.00), or
- (2) Submit an application and documentation to the Oklahoma Department of Commerce, as required by the Department, outlining a capital expenditure plan in this state associated with qualified capital expenditures totaling no less than Five Hundred Million Dollars (\$500,000,000.00), provided a separate establishment has been

approved by the Oklahoma Department of Commerce to participate in the investment rebate program pursuant to division (1) of this subparagraph, and such establishment participating pursuant to division (1) of this subparagraph remains in compliance with such approved application, and

- b. Have made qualified capital expenditures of no less than twenty percent (20%) of the capital expenditure plan outlined in the application submitted by the primary establishment and approved by the Oklahoma Department of Commerce, pursuant to the provisions of this act.

New investment in this state of a subsidiary of a primary establishment, if such subsidiary is defined or classified in the NAICS Manual under Industry Group No. 5132, 5222, or 5413, shall be aggregated with the investment in this state of the primary establishment for the purpose of determining if the thresholds provided in this paragraph are met;

2. Be qualified to receive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act created pursuant to Section 3601 of Title 68 of the Oklahoma Statutes; and

3. Have filed all Oklahoma tax returns and tax documents required by law.

F. 1. Notwithstanding any other provision of law, if a primary establishment receives an investment rebate payment pursuant to the provisions of this act, neither the qualified establishment nor its subsidiaries shall be eligible to receive the credits provided for in Section 2357.4 of Title 68 of the Oklahoma Statutes, in connection with the project or development for which the investment rebate payment was based; provided, however, the limitation provided in this paragraph, on claiming credits, shall not apply to the amount of qualifying capital expenditure in excess of Four Billion Five Hundred Million Dollars (\$4,500,000,000.00) made by an establishment on a project or development in this state.

2. Notwithstanding any other provision of law, no investment expenditure shall be utilized for calculation purposes in a way that results in the qualification of more than one establishment under the provisions of this act, for investment rebate payments based on the same expenditure.

3. Notwithstanding any other provision of law, no investment rebate payment amount pre-qualified or pre-encumbered by the Oklahoma Department of Commerce for an establishment qualifying for payment under the provisions of division (1) of subparagraph a of paragraph 1 of subsection E of this section, shall be reallocated to an establishment that at such time is participating under an approved application pursuant to division (2) of subparagraph a of paragraph 1 of subsection E of this section.

G. 1. Except as limited by paragraph 2 of this subsection, the Oklahoma Department of Commerce shall approve or disapprove claims for rebates and shall notify the Tax Commission subject to the limitations set forth in Section 5 of this act. Upon notification of approval from the Department, the Commission shall issue payment for all approved claims from funds held in the Large-scale Economic Activity and Development Fund created pursuant to Section 6 of this act and subject to the limitations set forth in Section 5 of this act.

2. The Department shall disapprove all applications and claims, as well as portions of applications and claims, for rebates that would exceed the balance of available funds in the Large-scale Economic Activity and Development Fund.

H. The total amount of applications approved and investment rebate payments awarded under the provisions of this act shall not exceed the total amount of monies designated by law for deposit to the Large-scale Economic Activity and Development Fund.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Subject to the approval and ongoing review of the eligibility application by the Oklahoma Department of Commerce, the investment rebate payment authorized by this act shall be equal to three and four-tenths percent (3.4%) of the cost of the qualified capital expenditure in the year of expenditure; investment rebate payments in the same amount shall be allowed in each of the four (4) subsequent years, provided the Department has verified that the establishment remains eligible for such payment in each successive year based on the eligibility criteria of this act.

B. For the purpose of calculating the investment rebate payment authorized in subsection A of this section, the "cost of the qualified capital expenditure" shall include the cost of such capital expenditure by the primary establishment and also the cost of such capital expenditure by subsidiaries of the primary establishment, provided such subsidiary is defined or classified in the NAICS Manual under Industry Group No. 5132, 5222, or 5413.

C. The Oklahoma Department of Commerce is authorized to conditionally pre-qualify and account for anticipated future investment rebate payments. The Oklahoma Department of Commerce shall not pre-qualify investment rebate payments, encumber funds, pre-encumber funds, or otherwise allocate resources in any way that would result in the allocation of investment rebate payments in excess of the balance of available funds in the Large-scale Economic Activity and Development Fund.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3645.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a fund for the Oklahoma Tax Commission to be designated the "Large-scale Economic Activity and Development Fund", also known as the "LEAD Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies designated for deposit to the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Tax Commission for the purpose of paying rebates as provided in the Large-scale Economic Activity and Development Act of 2022. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

B. All unencumbered funds remaining in the Large-scale Economic Activity and Development Fund upon the expiration of the Large-scale Economic Activity and Development Act of 2022 shall be transferred to the State Treasurer for deposit in the General Revenue Fund.



Passed the House of Representatives the 19th day of April, 2022.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 21st day of April, 2022.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_