

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3081

By: Hilbert

AS INTRODUCED

An Act relating to revenue and taxation; defining terms; creating a strategic industrial development enhancement tax credit; limiting credits to certain amount for certain projects; preventing certain application of credit; allowing assignment of credit; requiring certain documents for assignment; authorizing carryover of credit; setting total annual credit cap; authorizing Oklahoma Tax Commission and Oklahoma Department of Commerce to promulgate certain rules; providing for codification; and providing an effective date.

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 2357.105 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Eligible entity" means a business entity incorporated and located in the state with a qualifying project in a qualifying project location that receives an allocation of tax credits for qualified economic development and qualified initial infrastructure expenditures;

1 2. "Qualifying project" means the new construction or expansion
2 of an eligible entity or the development of qualified initial
3 infrastructure to serve an eligible entity in a qualifying project
4 location;

5 3. "Qualifying project location" means a project located in an
6 industrial park, economic development zone, or port located within a
7 county in this state with a population of less than one hundred
8 thousand (100,000) persons ("Qualified Area"), or a project located
9 adjacent to a terminal, switching, or Class II or III railroad as
10 defined by the federal Surface Transportation Board;

11 4. "Project sponsor" means a local economic development
12 organization or authority, organized under Section 501(c)(3) of the
13 Internal Revenue Code, 26 U.S.C., Section 501(c)(3), port authority,
14 qualified industrial park, or a terminal, switching, or Class II or
15 III railroad;

16 5. "Project application" means an application submitted by a
17 project sponsor on behalf of a qualifying project for an allocation
18 of qualifying strategic industrial development enhancement (SIDE)
19 tax credits. Project applications must include a description of the
20 qualifying project, project location, detailed project costs, and a
21 summary of expected economic benefits and job creation;

22 6. "Qualified economic development expenditures" means
23 expenditures for land improvements, building construction, building
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1 improvements and expansion, port terminal improvements, and the
2 purchase of certain machinery and equipment;

3 7. "Qualified initial infrastructure expenditures" means
4 expenditures for new rail infrastructure and improvements, which
5 includes the acquisition of right of way, engineering, construction
6 of new track such as industrial leads, switches, spurs, and sidings,
7 loading dock improvements, and transloading structures involved with
8 providing rail service to a qualifying project; and

9 8. "Project tax credit amount" means the amount of tax credits
10 allocated by Oklahoma Department of Commerce to a qualifying project
11 for qualified economic development and initial infrastructure
12 expenditures.

13 B. For tax years beginning after December 31, 2022, and ending
14 not later than December 31, 2027, there shall be allowed a credit
15 against the tax imposed pursuant to Section 2355 of Title 68 of the
16 Oklahoma Statutes in the amount not to exceed ten percent (10%) of
17 an eligible entity's qualified economic development expenditures,
18 subject to limitations, determination, and allocation by the
19 Oklahoma Department of Commerce.

20 C. The total project tax credit amount may not exceed ten
21 percent (10%) of the qualified economic development expenditures,
22 except for qualified initial infrastructure expenditures the project
23 tax credit amount is earned at rate of fifty percent (50%) of
24 qualified initial infrastructure expenditures.

1 D. 1. The project tax credit amount for qualified economic
2 development expenditures may not exceed Six Million Dollars
3 (\$6,000,00.00) per qualifying project; and

4 2. The project tax credit amount for qualified initial
5 infrastructure expenditures may not exceed Three Million Dollars
6 (\$3,000,000.00) per qualifying project.

7 Projects are eligible to combine qualified economic development
8 and qualified initial infrastructure expenditures, but the total
9 project tax credit amount may not exceed Six Million Dollars
10 (\$6,000,000.00) per qualifying project in aggregate.

11 E. The project tax credit amount that may be claimed or
12 assigned to a qualifying project affiliate in any year may not
13 exceed one-third (1/3) of the project tax credit amount awarded
14 beginning in the year that construction is initiated.

15 F. The issuance of the project tax credit amount shall be
16 subject to review of eligible expenditures and qualifying project
17 status by the Oklahoma Department of Commerce.

18 G. The credits authorized pursuant to this section may not be
19 used to reduce the tax liability of the taxpayer to less than zero
20 (0).

21 H. The credits allowed pursuant to this section that are not
22 used may be assigned to a qualifying project affiliate by written
23 agreement at any time during the five (5) years following the tax
24 year the qualified expenditures are incurred. For purposes of this

1 subsection, a "qualifying project affiliate" shall include a
2 customer, vendor, project investor, or strategic finance partner of
3 the eligible entity subject to the Oklahoma corporate or individual
4 income tax. The eligible taxpayer and the qualifying project
5 affiliate must jointly file a copy of the written assignment
6 agreement with the Oklahoma Tax Commission within thirty (30) days
7 of the assignment. The written agreement must contain the name,
8 address, and taxpayer identification number of the parties to the
9 assignment, the tax year the eligible taxpayer incurred the
10 qualified expenditures, the amount of credit being assigned, and the
11 tax year or years for which the credit may be claimed.

12 I. To the extent not used, the tax credit authorized by this
13 section may be carried over, in order, to each of the five (5)
14 subsequent taxable years.

15 J. The total credits authorized pursuant to this section for
16 all taxpayers shall not exceed Twelve Million Dollars
17 (\$12,000,000.00) annually beginning in tax year 2023. In the event
18 the total tax credits authorized by this section exceed Twelve
19 Million Dollars (\$12,000,000.00) annually in any calendar year, the
20 Tax Commission shall permit any excess over Twelve Million Dollars
21 (\$12,000,000.00) annually but shall factor such excess into the
22 percentage adjustment formula for subsequent years. The Tax
23 Commission shall annually calculate and publish by the first day of
24 the affected year a percentage by which the credits authorized by

1 this section shall be reduced so the total amount of credits used to
2 offset tax does not exceed Twelve Million Dollars (\$12,000,000.00)
3 annually per year. The formula to be used for the percentage
4 adjustment shall be Twelve Million Dollars (\$12,000,000.00) annually
5 divided by the credits claimed in the second preceding year.

6 K. 1. The Oklahoma Tax Commission may promulgate rules, forms,
7 and regulations as are necessary to implement and administer the
8 provisions of this section and certify the tax credit amount
9 generated by each qualifying project annually.

10 2. The Oklahoma Department of Commerce shall promulgate rules
11 to permit verification of the eligibility of a qualifying project
12 for the purpose of claiming the credit. The rules shall provide for
13 the approval of qualified economic development expenditures prior to
14 commencement of a project and provide a certificate of verification
15 upon completion of a project that uses qualified economic
16 development expenditures. The certificate of verification shall
17 satisfy all requirements of the Oklahoma Tax Commission pertaining
18 to the eligibility of the eligible taxpayer claiming the credit.

19 SECTION 2. This act shall become effective January 1, 2023.
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