

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 381

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to economic and infrastructure
8 development payments; amending 62 O.S. 2021, Section
9 48.2, as last amended by Section 1, Chapter 313,
10 O.S.L. 2019, which relates to the Oklahoma Quick
11 Action Closing Fund; requiring the Oklahoma
12 Department of Commerce to make available certain
13 information pertaining to establishments receiving
14 certain payments; updating statutory language; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 62 O.S. 2021, Section 48.2, as
18 last amended by Section 1, Chapter 313, O.S.L. 2019, is amended to
19 read as follows:

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

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

27 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 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~~ this state, in retaining such
15 project or facility within the state or for payment of rebates to a
16 high impact production pursuant to the Oklahoma Film Enhancement
17 Rebate Program. Expenditures from the fund shall be made upon
18 warrants issued by the State Treasurer against claims filed as
19 prescribed by law with the Director of the Office of Management and
20 Enterprise Services for approval and payment.

21 C. In order to qualify for any funds from the Oklahoma Quick
22 Action Closing Fund, the establishment making application shall be
23 engaged in a business activity described by a North American
24 Industry Classification System (NAICS) Code used to define

1 eligibility for incentive payments from the Oklahoma Quality Jobs
2 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
3 Statutes or a business activity described by Section 3603 of Title
4 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
5 to define eligibility for incentive payments from the 21st Century
6 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
7 of the Oklahoma Statutes or a high impact production company which
8 has been approved for a rebate pursuant to the provisions of Section
9 3624 of Title 68 of the Oklahoma Statutes.

10 D. Except in the case of a high impact production company
11 which has been approved for a rebate pursuant to the provisions of
12 Section 3624 of Title 68 of the Oklahoma Statutes, the Governor
13 shall not approve payments from the Oklahoma Quick Action Closing
14 Fund unless the Department of Commerce has conducted a complete
15 analysis of the potential impact of the applicant's business
16 activity which shall include, but not be limited to:

17 1. The number of jobs to be created by a new business
18 establishment;

19 2. The number of jobs to be retained by an existing business
20 establishment;

21 3. The average salary of jobs to be created by a new
22 establishment;

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

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

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

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

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

11 E. The Oklahoma Department of Commerce shall administer the
12 Oklahoma Quick Action Closing Fund, and expenditures from the fund
13 shall be recommended by the Director of the Oklahoma Department of
14 Commerce to the Governor after a thorough evaluation of selected
15 projects or facilities or after a rebate is approved for payment to
16 a high impact production company pursuant to the provisions of
17 Section 3624 of Title 68 of the Oklahoma Statutes. Except for
18 rebates approved pursuant to the provisions of Section 3624 of Title
19 68 of the Oklahoma Statutes, the Director of the Oklahoma Department
20 of 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, but not be limited to,
12 requirements for economic impact, local participation in the
13 project, capital investment and 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.

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. Except in the case of a rebate approved for payment to a
7 high impact production company pursuant to the provisions of Section
8 3624 of Title 68 of the Oklahoma Statutes, the performance
9 conditions that must be met to obtain the award including, but not
10 limited to, net new employment in the state, average salary, and
11 total capital investment;

12 3. If appropriate, a baseline of current service and measure of
13 enhanced capability;

14 4. The methodology of validating performance;

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

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

22 I. The Department of Commerce shall make available on its
23 website or other website dedicated for this purpose a complete
24 disclosure of all payments made from the Oklahoma Quick Action

1 Closing Fund. The disclosure shall include a description of the
2 expenditures made by the business establishment with the payments
3 made from the fund. No proprietary information of the business
4 establishment shall be subject to the requirements of this
5 subsection. The Department shall also make available the following
6 information associated with each payment made from the Fund:

7 1. Expected capital investment;

8 2. Expected job creation;

9 3. Expected average wages;

10 4. Performance conditions and any thresholds required in the
11 agreement, updated on an annual basis;

12 5. Actual capital investment, updated on an annual basis;

13 6. Actual job creation, updated on an annual basis;

14 7. Actual average wages, updated on an annual basis; and

15 8. Factors the Department used to deem a business project or
16 facility as high-impact.

17 J. If any or all of the amount to be awarded is used to build a
18 capital improvement, except in the case of an amount approved for
19 payment to a high impact production company pursuant to the
20 provisions of Section 3624 of Title 68 of the Oklahoma Statutes:

21 1. The funds used for the capital improvement shall be deemed
22 to be held in trust for the benefit of the state and shall be
23 considered as a priority claim for purposes of federal bankruptcy
24 law; and

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

3 a. repay the state the money awarded to pay for the
4 capital improvement, with interest at the rate and
5 according to the other terms provided by the
6 agreement, and

7 b. share with the state a proportionate amount of any
8 profit realized from the sale.

9 K. If, as of the date certain provided in the agreement, the
10 award recipient has not used monies awarded for the intended
11 purposes, the recipient shall repay that amount and any related
12 interest to the state at the agreed rate and on the agreed terms and
13 any such amounts shall be deemed to be held in trust for the benefit
14 of the state and shall be considered as a priority claim for
15 purposes of federal bankruptcy law.

16 SECTION 2. This act shall become effective November 1, 2023.

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