

1 ENGROSSED SENATE
2 BILL NO. 1177

By: Thompson (Roger) and Hall
of the Senate

3 and

4 Wallace and Martinez of the
5 House

6
7 An Act relating to economic development; creating the
8 Perform Act; providing short title; defining terms;
9 creating investment rebate program; setting job
10 threshold requirements; providing for administration
11 of rebate program; requiring certain report to
12 specified persons; providing for promulgation of
13 rules; providing requirements for rebate eligibility;
14 prohibiting receipt of certain credits or rebate
15 payments under circumstances; prohibiting approval of
16 claims based on available funds; stipulating rebate
17 payment procedure; authorizing certain
18 prequalification of rebates for certain purposes;
19 prohibiting prequalification of rebates in excess of
20 certain fund amounts; creating the Perform Fund;
21 stating sources of funds; providing for expenditures
22 from fund; providing for transfer of funds to General
23 Revenue Fund under certain circumstances; providing
24 for codification; and declaring an emergency.

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 3646.1 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 "Perform Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3646.2 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Perform Act:

5 1. "Application" means the submission to the Oklahoma
6 Department of Commerce of detailed information by an establishment
7 that complies with all procedures established by the Department
8 related to the format, content, means, and timing of the submission
9 of the application. A submission shall include, but not be limited
10 to, a capital expenditure plan detailing anticipated annual
11 placements-in-service of qualified property and a job creation plan
12 detailing anticipated annual totals of new direct jobs created;

13 2. "Available funds" means the total amount of monies
14 identified for deposit in the Perform Fund pursuant to this act,
15 less the cumulative total of all rebate payments, pre-qualified
16 rebate payments, encumbrances, and pre-encumbrances of the Perform
17 Fund;

18 3. "Establishment" means any business including, but not
19 limited to, a sole proprietorship, partnership, corporation, or
20 limited liability company;

21 4. "New direct job" means full-time employment positions that
22 did not exist in this state prior to the date of approval of an
23 application made pursuant to this act. A job shall be deemed to
24 exist in this state prior to the approval date of an application if

1 the activities and functions for which the particular job exists
2 have been ongoing on a full-time equivalent basis at any time within
3 six (6) months prior to the approval date; and

4 5. "Qualified capital expenditure" means an expenditure on
5 property in this state after April 1, 2023, depreciable under
6 Internal Revenue Code, 26 U.S.C., Section 168, that has been
7 verified by the Oklahoma Department of Commerce.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3646.3 of Title 68, unless there
10 is created a duplication in numbering, reads as follows:

11 A. 1. There is hereby created until July 1, 2032, an
12 investment rebate program for the cost of qualified capital
13 expenditures by an establishment that creates not less than a
14 threshold number of new direct jobs as provided in this section.

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

- 19 a. one hundred new direct jobs for the first investment
20 rebate payment,
- 21 b. five hundred cumulative new direct jobs for the second
22 investment rebate payment,
- 23 c. eight hundred cumulative new direct jobs for the third
24 investment rebate payment,

- 1 d. eight hundred cumulative new direct jobs for the
2 fourth investment rebate payment, and
3 e. one thousand four hundred cumulative new direct jobs
4 for the fifth investment rebate payment.

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

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

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

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

21 1. Submit an application and documentation to the Oklahoma
22 Department of Commerce detailing a capital expenditure plan in this
23 state associated with qualified capital expenditures totaling no
24 less than One Billion Dollars (\$1,000,000,000.00);

1 2. Have made qualified capital expenditures of no less than
2 twenty percent (20%) of the capital expenditure plan outlined in the
3 approved application;

4 3. Be qualified to receive payments pursuant to the provisions
5 of the Oklahoma Quality Jobs Program Act created pursuant to Section
6 3601 et seq. of Title 68 of the Oklahoma Statutes; and

7 4. Have filed all Oklahoma tax returns and tax documents
8 required by law.

9 F. Notwithstanding any other provision of law, if an
10 establishment receives an investment rebate payment pursuant to the
11 provisions of this act, neither the qualified establishment nor its
12 subsidiaries shall be eligible to receive the credits provided for
13 in Section 2357.4 of Title 68 of the Oklahoma Statutes or the
14 investment rebate payments provided pursuant to the Large-scale
15 Economic Activity and Development Act of 2022, in Section 3645.1 et
16 seq. of Title 68 of the Oklahoma Statutes, in connection with the
17 project or development for which the investment rebate payment was
18 based.

19 G. Notwithstanding any other provision of law, no investment
20 expenditure shall be utilized for calculation purposes that result
21 in the qualification of more than one establishment under the
22 provisions of this act, for investment rebate payments based on the
23 same expenditure.

1 H. Except as limited by subsection I of this section, the
2 Oklahoma Department of Commerce shall approve or disapprove claims
3 for rebates and shall notify the Tax Commission. Upon notification
4 of approval from the Department, the Commission shall issue payment
5 for all approved claims from funds held in the Perform Fund created
6 pursuant to Section 5 of this act and subject to the limitations set
7 forth in Section 4 of this act.

8 I. The Department shall disapprove all or any portion of
9 applications and claims for rebates that would exceed the balance of
10 available funds in the Perform Fund. The total amount of
11 applications approved and investment rebate payments awarded under
12 the provisions of this act shall not exceed the total amount of
13 monies designated by law for deposit to the Perform Fund.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3646.4 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Subject to the approval and ongoing review of the
18 eligibility application by the Oklahoma Department of Commerce, the
19 investment rebate payment authorized by this act shall be equal to
20 ten percent (10%) of the cost of the qualified capital expenditures
21 to be paid upon claims made by the establishment as provided for in
22 subsection B of this section. An establishment shall not be
23 eligible to submit more than one claim per calendar year.

24 B. Investment rebate payments shall be made as follows:

1 1. Upon the first claim of the establishment, ten percent (10%)
2 of the cumulative qualified capital expenditures made by the
3 establishment, with the first investment rebate payment not to
4 exceed Thirty-six Million Dollars (\$36,000,000.00);

5 2. Upon the second claim of the establishment, ten percent
6 (10%) of the qualified capital expenditures made by the
7 establishment subsequent to the first claim, plus any preceding
8 qualified capital expenditures for which an investment rebate
9 payment was not made due to the limitation provided in paragraph 1
10 of this subsection, with the second investment rebate payment not to
11 exceed Thirty-six Million Dollars (\$36,000,000.00) plus the
12 difference, if any, between the investment rebate payment made upon
13 the first claim and Thirty-six Million Dollars (\$36,000,000.00);

14 3. Upon the third claim of the establishment, ten percent (10%)
15 of the qualified capital expenditures made by the establishment,
16 subsequent to the second claim plus any preceding qualified capital
17 expenditures for which an investment rebate payment was not made due
18 to the limitation provided in paragraph 2 of this subsection, with
19 the third investment rebate payment not to exceed Thirty-six Million
20 Dollars (\$36,000,000.00) plus the difference, if any, between the
21 investment rebate payment made upon the second claim and the
22 limitation provided in paragraph 2 of this subsection;

23 4. Upon the fourth claim of the establishment, ten percent
24 (10%) of the qualified capital expenditures made by the

1 establishment subsequent to the third claim, plus any preceding
2 qualified capital expenditures for which an investment rebate
3 payment was not made due to the limitation provided in paragraph 3
4 of this subsection, with the fourth investment rebate payment not to
5 exceed Thirty-six Million Dollars (\$36,000,000.00) plus the
6 difference, if any, between the investment rebate payment made upon
7 the third claim and the limitation provided in paragraph 3 of this
8 subsection; and

9 5. Upon the fifth claim of the establishment, ten percent (10%)
10 of the qualified capital expenditures made by the establishment
11 subsequent to the fourth claim, plus any preceding qualified capital
12 expenditures for which an investment rebate payment was not made due
13 to the limitation provided in paragraph 4 of this subsection, with
14 the fifth investment rebate payment not to exceed Thirty-six Million
15 Dollars (\$36,000,000.00) plus the difference, if any, between the
16 investment rebate payment made upon the fourth claim and the
17 limitation provided in paragraph 4 of this subsection.

18 C. The Department is authorized to conditionally pre-qualify
19 and account for anticipated future investment rebate payments. The
20 Department shall not pre-qualify investment rebate payments,
21 encumber funds, pre-encumber funds, or otherwise allocate resources
22 in any way that would result in the allocation of investment rebate
23 payments in excess of the balance of available funds in the Perform
24 Fund.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3646.5 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. There is hereby created in the State Treasury a fund for the
5 Oklahoma Tax Commission to be designated the "Perform Fund". The
6 fund shall be a continuing fund, not subject to fiscal year
7 limitations, and shall consist of all monies designated for deposit
8 to the fund by law. All monies accruing to the credit of the fund
9 are hereby appropriated and may be budgeted and expended by the Tax
10 Commission for the purpose of paying rebates as provided in the
11 Perform Act. Expenditures from the fund shall be made upon warrants
12 issued by the State Treasurer against claims filed as prescribed by
13 law with the Director of the Office of Management and Enterprise
14 Services for approval and payment.

15 B. All unencumbered funds remaining in the Perform Fund upon
16 the expiration of the investment rebate program provided in
17 subsection A of Section 3 of this act shall be transferred to the
18 State Treasurer for deposit in the General Revenue Fund.

19 SECTION 6. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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