

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2373

By: McCarter, Balkman, Nance,
Nations, Adkins, Blackburn,
Blackwell, Deutschendorf,
Easley, Hefner, Lindley and
Wells of the House

and

Leftwich (Debbe), Maddox,
Wilcoxson and Gumm of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economic development; enacting the Oklahoma Quality Investment Act; stating legislative intent; providing for correlation between incentive amount and certain benefits; providing for implementation of Oklahoma Quality Investment Act; stating character of powers exercised under Oklahoma Quality Investment Act; making statements regarding interpretation of Oklahoma Quality Investment Act; defining terms; authorizing qualified establishment to enter into certain agreement; providing for effect of agreement; specifying certain required terms of agreement; stating maximum amount of capital investment eligible for investment payments; providing method for computation of investment payments; prohibiting investment payments until certain date; prohibiting investment payments in excess of certain amount; providing for treatment of investment in excess of certain thresholds; authorizing investment payments according to certain method and for specified period of time; imposing maximum amount of investment payments; authorizing carryover of certain investment payments; prescribing procedures for investment agreement; imposing duties upon the Oklahoma Department of Commerce; establishing certain requirements with respect to qualified establishment; prescribing procedures related to agreement; creating the Quality Investment Payment Fund; authorizing deposit of certain revenues into Fund; prescribing amount of funds deposited; stating purpose of deposits; imposing limitation upon liability of State of Oklahoma; prescribing procedures for incentive payment claims; imposing limitation for claims; requiring verification by Oklahoma Tax Commission; authorizing procedures for verification of claim amounts; providing for cessation of investment payments under certain conditions; authorizing actions for recovery of investment payments under certain circumstances;

providing exception for recovery or recapture; authorizing payments based upon certain conditions; prohibiting applications for certain additional investment payments; providing exception; providing for issuance of warrant for payment; prohibiting availability of certain credits, exemptions or incentives based upon receipt of investment payments pursuant to Oklahoma Quality Investment Act; providing for promulgation of rules by Oklahoma Department of Commerce and Oklahoma Tax Commission; imposing criminal liability for certain willful acts with regard to applications, claims, reports, returns, statements, invoices or other instruments; authorizing fine and imprisonment; providing for repayment and interest; providing for codification; providing an effective date; 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 4101 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 "Oklahoma Quality Investment Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4102 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to support retention of a qualified manufacturing establishment:

- a. that is imminently at risk of ceasing operations in this state,
- b. that provides long-term benefits through retention of quality jobs which increase the wealth of the state, and
- c. that agrees to engage in significant modernization and retooling that will promote the growth of the industry in Oklahoma and, by doing so, stabilize the economy of the State of Oklahoma when there is a direct threat to

the existing revenue base and wealth of the state because existing establishments are at risk of being lost to other states or nations;

2. The amount of incentives provided pursuant to this act in connection with a particular establishment be directly related to benefits due to retention of jobs and the investment of additional capital for modernizing and retooling;

3. The Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and

4. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association. Nor does this act authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association. Nothing herein shall be construed to constitute a gift by the State of Oklahoma to any individual, company, corporation or association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4103 of Title 68, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Quality Investment Act:

1. "Capital costs" means costs for land, buildings, improvements to buildings, fixtures and for machinery, equipment and other personal property used in and for the manufacturing process incurred by a qualified establishment, on or after the effective date of this act, with respect to the manufacturing site located in this state and specified in a quality investment agreement;

2. "Department" means the Oklahoma Department of Commerce;

3. "Qualified establishment" means a business entity engaged in the activity described by Industry Number 3011, Industry Group

Number 301, Major Group 30 of the Standard Industrial Classification manual, latest revision. No establishment that has been certified as eligible to participate in the Oklahoma Quality Jobs Incentive Leverage Act incentive program shall be eligible for any investment payment pursuant to the Oklahoma Quality Investment Act. A qualified establishment shall enter into a quality investment agreement pertaining to a single manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of an establishment or any related entities of an establishment shall be included in a quality investment agreement. An establishment may enter into additional quality investment agreements for additional sites;

4. "Fiscal year" means the state fiscal year, which shall begin on July 1 of a calendar year and end on June 30 of the next calendar year;

5. "Quality investment agreement" means an agreement with duration, for purposes of computing the total incentive payment amount, of not more than five (5) years entered into between a qualified establishment and the Department; and

6. "Start date" means the date on which a qualified establishment begins accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement with the Oklahoma Department of Commerce.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4104 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A qualified establishment shall be eligible to enter into a quality investment agreement with the Oklahoma Department of Commerce for a period not to exceed five (5) years.

B. Under such an agreement, the establishment shall agree to abide by the terms of the agreement in accordance with the

provisions of this act, including investing capital costs in this state in a projected amount each year during the term of the agreement. Actual investment amounts may vary from those amounts specified in the agreement, but in no event shall the quality investment payments made exceed an amount that is based on the estimated amount in the agreement or the actual investment amount listed in the claim and verified by the Oklahoma Tax Commission. The total amount of capital costs eligible for investment payments to a qualified establishment shall not exceed Fifty Million Dollars (\$50,000,000.00). In exchange, the state shall agree to make an annual payment in an amount equal to ten percent (10%) of the amount of capital costs invested by the qualified establishment in this state during the preceding fiscal year.

C. No investment payment authorized by this act shall be made to a qualified establishment until July 1, 2005, or thereafter. The amount of investment payment shall not exceed a total of One Million Dollars (\$1,000,000.00) for any fiscal year during which a quality investment agreement is in effect.

D. If a qualified establishment makes a capital investment during any period of time in excess of Ten Million Dollars (\$10,000,000.00) and the amount of the investment payment to which the establishment is otherwise entitled by this act would exceed the limit prescribed by subsection C of this section, the establishment may carry over the excess investment payment amount to any subsequent fiscal year and may be paid such amount in a subsequent year if the combined amount of the carryover and investment payment based on actual capital investment for the preceding period does not exceed One Million Dollars (\$1,000,000.00). Not more than Five Million Dollars (\$5,000,000.00) in total investment payments shall be payable or paid to a qualified establishment.

E. Any carryover amount may be carried over for a period of time necessary in order for the qualified establishment to be paid

the full amount of investment payments authorized by this act based upon actual capital investment made in the state during the term of the quality investment agreement.

F. A qualified establishment may enter into a quality investment agreement with the Department according to the following procedures:

1. The establishment shall make an initial application to the Department on a form prescribed by the Department containing such information as may be required by the Department;

2. The Department shall determine if the establishment meets the following requirements:

- a. the establishment is engaged in manufacturing described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification Manual, latest revision, at a specified site in this state,
- b. the establishment has been located and doing business in this state for a continuous period of time of not less than ten (10) years prior to the date of the application,
- c. the establishment offers, or will offer within twelve (12) months of entering into a quality investment agreement, a basic health benefits plan as described in subparagraph b of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes to its employees in this state,
- d. the establishment will incur, with respect to the manufacturing site which is the subject of the agreement, capital costs projected to equal or exceed Ten Million Dollars (\$10,000,000.00) within the period of the quality investment agreement, and capital costs projected to equal or exceed One Million Dollars

(\$1,000,000.00) during the first year of the agreement,

- e. the establishment will maintain Oklahoma taxable payroll during the period of the quality investment agreement and for at least two (2) years following expiration of the agreement in an amount not less than sixty percent (60%) of the establishment's Oklahoma taxable payroll as of the start date, and
- f. the establishment will pay its employees in this state an average annualized wage which equals or exceeds Forty Thousand Dollars (\$40,000.00) exclusive of health care benefits paid for by the establishment.

3. The determination shall be made upon application of the establishment and annually thereafter as a condition of receiving an investment payment pursuant to the provisions of this act; and

Upon approval of an establishment, the Department shall enter into a quality investment agreement with the establishment for a period not to exceed five (5) years. The agreement shall specify the start date and the duration of the agreement. The agreement shall provide that:

- a. the establishment shall receive an investment payment in an amount determined by the provisions of this section,
- b. the establishment shall continue to meet the requirements of paragraph 2 of this subsection and all other provisions of this act for the duration of the agreement, and
- c. the establishment shall agree to make an investment in capital costs in this state in a projected amount for each year of the agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4105 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Quality Investment Payment Fund". The Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Sections 1354 and 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount required for making investment payments, as determined pursuant to the provisions of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Quality Investment Act. The liability of the State of Oklahoma to make the investment payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4106 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a fiscal year for which a qualified establishment has qualified to receive an investment payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission for ten percent (10%) of the total amount of capital costs actually invested by the establishment during such fiscal year.

B. If the first claim for investment payment is filed later than two (2) years from the start date designated by the Department, the agreement shall be deemed expired and void.

C. The Tax Commission shall verify for each fiscal year the actual amount of capital costs and the actual tax benefit accrued or to be accrued to the State of Oklahoma. If the Tax Commission is

not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may reject the establishment's claim based upon analysis of actual capital costs incurred by the establishment.

D. If the qualified establishment does not meet the terms of the agreement and all provisions of this act, investment payments shall cease and shall not be resumed, and the agreement shall expire and be void. The Oklahoma Department of Commerce may seek to recover in a court of competent jurisdiction any payments made to a qualified establishment if the establishment does not comply with the requirements of subparagraph e of paragraph 2 of subsection F of Section 4 of this act; provided, however, that no investment payments shall be subject to recovery or recapture based upon a failure to invest capital equal to the amount estimated by the qualified establishment as stated in a quality investment agreement.

E. A qualified establishment that has qualified pursuant to Section 4 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved.

F. An establishment that is receiving investment payments may not apply for additional investment payments for any new capital costs until expiration of its quality investment agreement. Provided, a qualified establishment may apply for additional investment payments pursuant to subsequent quality investment agreements based upon additional capital costs at a different manufacturing site.

G. As soon as practicable after verification of the eligibility of the manufacturer as required by this section, the Tax Commission shall issue a warrant to the establishment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4107 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified establishment receives an investment payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the investment payment was received:

1. Section 625.1 of Title 36 of the Oklahoma Statutes (premium tax credits);

2. Paragraph 7 of Section 1359 of Title 68 of the Oklahoma Statutes (construction materials sales tax refunds);

3. Section 2357.4 of Title 68 of the Oklahoma Statutes (new jobs/investment income tax credits);

4. Section 2902 of Title 68 of the Oklahoma Statutes (state reimbursement to communities for property tax exemptions to manufacturers);

5. Section 3601 et seq. of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Program Act);

6. Section 3651 et seq. of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Incentive Leverage Act);

7. Section 3701 et seq. of Title 68 of the Oklahoma Statutes (Saving Quality Jobs Act);

8. Section 3801 et seq. of Title 68 of the Oklahoma Statutes (Former Military Facility Development Act); and

9. Section 3901 et seq. of Title 68 of the Oklahoma Statutes (Small Employer Quality Jobs Incentive Act).

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4108 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce and the Oklahoma Tax Commission shall promulgate rules necessary to implement their

respective duties and responsibilities under the provisions of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4109 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00) or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all investment payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 10. This act shall become effective July 1, 2004.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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