

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1785

By: Rice and Gilbert

AS INTRODUCED

An Act relating to economic development; making legislative findings; enacting the Major Employer Headquarters Retention and Consolidation Act of 2003; defining terms; providing for application; prescribing procedures; authorizing incentive payment; providing for computation of incentive payment amount; creating the Major Employer Headquarters Retention and Consolidation Incentive Fund; enacting the Oklahoma Major Employer Capital Access Act of 2003; authorizing issuance of certain obligations by the Oklahoma Development Finance Authority; prescribing procedures for issuance of obligations; providing 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 4101 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature finds that certain business activity conducted by major employers within the state is essential to maintaining a healthy economy. Under current economic conditions, the potential loss of certain corporate headquarter operations and associated business activity would be an unacceptable loss for the state that might not be regained even during subsequent economic recovery periods. In order to reduce the likelihood of such undesirable economic effects and to maximize the use of state public sector resources in order to achieve the desired results, the Legislature finds that the provisions of this act serve the legitimate public purpose of preserving existing employment within the state, providing incentives for the location of jobs to the

state from without the state and the use of state resources, fiscal and otherwise, to promote a profitable business climate. The Legislature declares that it is desirable public policy to utilize the resources of the Oklahoma Development Finance Authority and other entities of state government to achieve the objectives of this 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:

Sections 2 through 6 of this act shall be known and may be cited as the "Major Employer Headquarters Retention and Consolidation Act of 2003".

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:

A. As used in Section 2 through 6 of the Major Employer Headquarters Retention and Consolidation Act:

1. "Application" means the form prescribed by the Oklahoma Department of Commerce for the determination of eligibility for the retention and consolidation incentive payment;

2. "Common stock" means the evidence of equity ownership issued and outstanding in a corporate business entity at least one of the attributes of which includes the right of voting in elections for purposes of corporate control and management;

3. "Controlling interest" means the entity owning a majority of the class of common stock of a corporate business entity with voting privileges;

4. "Earnings before interest, taxes, depreciation and amortization" means for any period, earnings before interest, taxes, depreciation, and amortization determined in accordance with United States generally accepted accounting principles;

5. "Gross compensation" means taxable wages;

6. "Headquarters" means a principal business location at which the chief executive officer, chief financial officer or other operating officers of a corporate entity are routinely physically present and at which the business enterprise conducts a majority of the administrative or managerial functions of the business in which it is engaged;

7. "Local government entity" means a county, municipality or public trust having a county or municipality or combination of counties and municipalities as beneficiary or beneficiaries;

8. "Local government entity combination" means two or more municipalities, two or more counties, at least one municipality together with at least one county, and one or more public trusts having one or more local governmental entities as their beneficiaries, respectively;

9. "Major employer" means a qualified business engaged in a business activity that is strategically important to the state economy;

10. "New direct relocated jobs" means full-time employment, which did not exist in the state prior to approval of this act;

11. "Out-of-state jobs" means full-time-equivalents that were located outside the State of Oklahoma by a qualifying company;

12. "Price-earnings ratio" means price per share divided by earning per share;

13. "Qualified business" means a corporation with its corporate headquarters in Oklahoma with the following:

- a. having at least five hundred (500) employees who are residents of the state as of the date an application is filed with the Oklahoma Department of Commerce,
- b. maintaining a corporate headquarters within the state,
- c. having a net asset value equal to or in excess of One Billion Dollars (\$1,000,000,000.00), and

d. having its common stock listed for trading on a nationally recognized stock exchange;

14. "Retention and consolidation incentive payment" means the periodic payment of the incentive described by Section 4 of this act based upon the gross compensation paid to new direct relocated jobs;

15. "Significant economic decline" means more than twenty-five percent (25%) loss in earnings before interest, taxes, depreciation and amortization within one (1) year prior to the date of an application; and

16. "Nationally recognized stock exchange" means the American Stock Exchange (AMEX), the New York Stock Exchange (NYSE) or the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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 major employer that has experienced a significant economic decline preceding the date of its application authorized by this act may apply for the retention and consolidation incentive payment.

B. The retention and consolidation incentive payment shall be computed as seven percent (7.0%) of the gross compensation paid to new direct relocated jobs from a jurisdiction other than the State of Oklahoma to the State of Oklahoma. Payment of the incentive shall not exceed ten (10) years.

C. The major employer shall file its application with the Oklahoma Department of Commerce on such form as may be prescribed by the Department for that purpose. The Department shall determine the eligibility of the applicant for the retention and consolidation incentive payment.

D. No application for the retention and consolidation incentive payment shall be approved unless the applicant demonstrates a commitment by a local government entity or local government entity

combination for financial support of the major employer in the form of direct contribution or other economic value equal to at least fifteen percent (15%) of the total amount of projected benefit to be received by the major employer pursuant to subsection A of this section.

E. Upon a determination of eligibility by the Oklahoma Department of Commerce, the Department shall certify its findings regarding the application to the Oklahoma Development Finance Authority. All retention and consolidation incentive payments to the major employer shall be made from the Major Employer Headquarters Retention and Consolidation Incentive Fund created pursuant to Section 6 of this act.

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:

A. A major employer that qualifies for the retention and consolidation incentive payment authorized by Section 4 of this act which ceases to conduct business operations after the date on which the first or any subsequent incentive payment is made or for a period of five (5) years after the date of the last incentive payment shall be liable to the State of Oklahoma for a penalty which shall be equal to the principal amount of the incentive payments made to the entity plus interest which shall be computed as provided in subsection B of this section.

B. The State Treasurer shall certify to the Oklahoma Department of Commerce the average rate of return for invested state funds under the control of the Treasurer for any relevant period of time determined by the Oklahoma Department of Commerce for purposes of computing the penalty authorized by subsection A of this section. The Treasurer shall compute the amount of earnings that would have accrued using the periodic amount of the incentive payment as a principal amount and the average or other relevant rate of return as

the interest rate to compute the total amount of principal and interest for which the major employer is liable to the State of Oklahoma.

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:

There is hereby created within the State Treasury a special fund for the Oklahoma Department of Commerce to be designated the "Major Employer Headquarters Retention and Consolidation Incentive Fund". All of the amounts deposited in such fund shall be used and expended by the Oklahoma Department of Commerce solely for the purposes and in the amounts authorized by the Major Employer Headquarters Retention and Consolidation Act of 2003. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

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:

Sections 7 through 9 of this act shall be known and may be cited as the "Oklahoma Major Employer Capital Access Act of 2003".

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:

A. The Oklahoma Development Finance Authority shall be authorized to issue obligations in a principal amount necessary to provide proceeds in an amount not to exceed Two Hundred Million Dollars (\$200,000,000.00) in order to assist a major employer that qualifies for the retention and consolidation incentive payment pursuant to Section 4 of this act.

B. Any obligations issued pursuant to this section shall not exceed a term of twenty (20) years.

C. Terms for the source of repayment, security, collateral and other terms governing the issuance and repayment of the obligations issued by the Oklahoma Development Finance Authority shall be subject to negotiation and agreement between the Authority and a major employer that qualifies for assistance pursuant to the requirements of this act.

D. The Oklahoma Development Finance Authority is authorized to use the Credit Enhancement Reserve Fund in regard to the incentive payment as contained in Section 4 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:

If at any time after the receipt of proceeds from the sale of obligations issued pursuant to Section 8 of this act, a major employer ceases its business operations within the state or if the majority of shares of common stock with voting privileges representing the controlling interest in the corporation to which the bond proceeds were paid are acquired by a person or other legal entity that did not own such controlling interest at the time the proceeds were paid, all obligations, including principal, interest, or such other amounts as may be specified in the bond indenture or similar instrument pursuant to which the obligations were issued, shall be due and payable in a period not to exceed forty-five (45) days to the Oklahoma Development Finance Authority.

SECTION 10. 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.

49-1-6133 MAH 01/23/03