

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB461
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Jeff Hickman

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 461

By: Nichols of the Senate
and
Terrill of the House

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9 PROPOSED COMMITTEE SUBSTITUTE

10 An Act relating to revenue and taxation; amending 68
11 O.S. 2001, Sections 2357.36, as last amended by
12 Section 9, Chapter 436, O.S.L. 2008, 2357.37, as last
13 amended by Section 10, Chapter 436, O.S.L. 2008, and
14 2357.40, as last amended by Section 13, Chapter 436,
15 O.S.L. 2008 (68 O.S. Supp. 2009, Sections 2357.36,
16 2357.37 and 2357.40), which relate to tax incentives
17 for tourism attractions and film, digital media
18 production or music production and development
19 facility projects; modifying definition; requiring
20 reports include analysis of the extent to which
21 projects are revenue neutral; requiring certain
22 subsequent extension of credits be revenue neutral;
23 limiting amount of subsequent extensions of credits;
24 requiring certain proof of expenditures prior to
granting credits; extending duration of credits; and
declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.36, as
last amended by Section 9, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
2009, Section 2357.36), is amended to read as follows:

1 Section 2357.36 As used in the Oklahoma Tourism Development

2 Act:

3 1. "Agreement" means an agreement entered into pursuant to
4 Section 2357.39 of this title, by and between the Director of the
5 Oklahoma Tourism and Recreation Department and an approved company,
6 with respect to a tourism attraction project or film, digital media
7 or music production and development facility project;

8 2. "Approved company" means any eligible company that is
9 seeking to undertake a tourism attraction or film, digital media or
10 music production and development facility project and is approved by
11 the Director pursuant to Sections 2357.38 and 2357.39 of this title;

12 3. "Approved costs" means:

13 a. obligations incurred for labor and to vendors,
14 contractors, subcontractors, builders and suppliers in
15 connection with the acquisition, construction,
16 equipping and installation of a tourism attraction
17 project or film, digital media or music production and
18 development facility project,

19 b. the costs of acquiring real property or rights in real
20 property in connection with a tourism attraction
21 project or film, digital media or music production and
22 development facility project, and any costs incidental
23 thereto,

- 1 c. the costs of contract bonds and of insurance of all
2 kinds that may be required or necessary during the
3 course of the acquisition, construction, equipping and
4 installation of a tourism attraction project or film,
5 digital media or music production and development
6 facility project which is not paid by the vendor,
7 supplier, contractor, or otherwise provided,
- 8 d. all costs of architectural and engineering services
9 including, but not limited to, estimates, plans and
10 specifications, preliminary investigations, and
11 supervision of construction and installation, as well
12 as for the performance of all the duties required by
13 or consequent to the acquisition, construction,
14 equipping and installation of a tourism attraction
15 project or film, digital media or music production and
16 development facility project,
- 17 e. all costs required to be paid under the terms of any
18 contract for the acquisition, construction, equipping
19 and installation of a tourism attraction project or
20 film, digital media or music production and
21 development facility project,
- 22 f. all costs required for the installation of utilities
23 in connection with a tourism attraction project or
24 film, digital media or music production and

1 development facility project including, but not
2 limited to, water, sewer, sewage treatment, gas,
3 electricity and communications, and including off-site
4 construction of utility extensions paid for by the
5 approved company, and

6 g. all other costs comparable with those described in
7 this paragraph;

8 4. "Director" means the Director of the Oklahoma Tourism and
9 Recreation Department or the Director's designated representative;

10 5. "Eligible company" means any corporation, limited liability
11 company, partnership, sole proprietorship, business trust or any
12 other entity, operating or intending to operate a tourism attraction
13 project or undertake film, digital media or music production and
14 development facility project, whether owned or leased, within this
15 state that meets the standards promulgated by the Director pursuant
16 to Section 2357.37 of this title;

17 6. "Final approval" means the action taken by the Director
18 authorizing the eligible company to receive inducements under
19 Section 2357.40 of this title;

20 7. "Increased state sales tax liability" means that portion of
21 an approved company's reported state sales tax liability resulting
22 from taxable sales of goods and services to its customers at the
23 tourist attraction or for purposes of a film, digital media or music
24 production and development facility project for any monthly sales

1 tax reporting period after the approved company provides the
2 certification required by subsection B of Section 2357.40 of this
3 title, which exceeds the reported state sales tax liability for
4 sales to its customers for the same month in the calendar year
5 immediately preceding the certification;

6 8. "Inducements" means the income tax credit or sales tax
7 credit as prescribed in Section 2357.40 of this title;

8 9. "Preliminary approval" means the action taken by the
9 Director conditioned upon final approval by the Director upon
10 satisfaction by the eligible company of the requirements of the
11 Oklahoma Tourism Development Act;

12 10. a. "Tourism attraction" means:

- 13 (1) a cultural or historical site,
- 14 (2) a recreational or entertainment facility,
- 15 (3) an area of natural phenomenon or scenic beauty,
- 16 (4) a theme park,
- 17 (5) an amusement or entertainment park,
- 18 (6) an indoor or outdoor play or music show,
- 19 (7) a botanical garden, ~~or~~
- 20 (8) a cultural or educational center, or
- 21 (9) a destination hotel whose location and amenities,
22 including but not limited to upscale dining,
23 recreation and entertainment, make the hotel
24 itself a destination for tourists.

1 b. A tourism attraction shall not include:

2 (1) lodging facilities, unless:

3 (a) the facilities constitute a portion of a
4 tourism attraction project and represent
5 less than fifty percent (50%) of the total
6 approved costs of the tourism attraction
7 project, or

8 (b) the lodging facilities are a part of a
9 destination hotel,

10 (2) facilities that are primarily devoted to the
11 retail sale of goods, unless the goods are
12 created at the site of the tourism attraction
13 project or if the sale of goods is incidental to
14 the tourism attraction project,

15 (3) facilities that are not open to the general
16 public,

17 (4) facilities that do not serve as a likely
18 destination where individuals who are not
19 residents of this state would remain overnight in
20 commercial lodging at or near the tourism
21 attraction project,

22 (5) facilities owned by the State of Oklahoma or a
23 political subdivision of this state, or

24

1 (6) facilities established for the purpose of
2 conducting legalized gambling. However, a
3 facility regulated under Section 200 et seq. of
4 Title 3A of the Oklahoma Statutes shall be a
5 tourism attraction for purposes of the Oklahoma
6 Tourism Development Act for any approved project
7 as outlined in subparagraph a of this paragraph
8 or for an approved project relating to pari-
9 mutuel racing at the facility and not for
10 establishing a casino or for offering casino-
11 style gambling; and

12 11. "Tourism attraction project", "film, digital media or music
13 production and development facility project" or "project" means:

- 14 a. the acquisition, including the acquisition of real
15 estate by leasehold interest with a minimum term of
16 ten (10) years, construction, and equipping of a
17 tourism attraction or film, digital media or music
18 production and development facility, and
- 19 b. the construction and installation of improvements to
20 facilities necessary or desirable for the acquisition,
21 construction, and installation of a tourism attraction
22 or film, digital media or music production and
23 development facility, including, but not limited to:
24 (1) surveys, and

- 1 (2) installation of utilities, which may include:
2 (a) water, sewer, sewage treatment, gas,
3 electricity, communications, and similar
4 facilities, and
5 (b) off-site construction of utility extensions
6 to the boundaries of the real estate on
7 which the facilities are located,
8 all of which are to be used to improve the economic
9 situation of the approved company in a manner that
10 shall allow the approved company to attract tourists.

11 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.37, as
12 last amended by Section 10, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
13 2009, Section 2357.37), is amended to read as follows:

14 Section 2357.37 A. The Director of the Oklahoma Tourism and
15 Recreation Department, with approval of the Oklahoma Tourism and
16 Recreation Commission, shall establish standards for the making of
17 applications for inducements to eligible companies and their tourism
18 attraction projects, or film, digital media and music production and
19 development facility projects by the promulgation of rules in
20 accordance with the Administrative Procedures Act.

21 B. With respect to each eligible company making an application
22 to the Director for inducements, and with respect to the tourism
23 attraction or film, digital media and music production and
24 development facility project described in the application, the

1 Director shall make inquiries and request materials of the applicant
2 that shall include, but shall not be limited to:

3 1. Marketing plans for the project that target individuals who
4 are not residents of this state;

5 2. A description and location of the project;

6 3. Capital and other anticipated expenditures for the project
7 that indicate that the total cost of the project shall exceed the
8 minimum amount set forth in subsection C of this section and the
9 anticipated sources of funding therefor;

10 4. The anticipated employment and wages to be paid at the
11 project;

12 5. Business plans which indicate the average number of days in
13 a year in which the project will be in operation and open to the
14 public, if applicable; and

15 6. The anticipated revenues and expenses generated by the
16 project.

17 Based upon a review of these materials, if the Director
18 determines that the eligible company and the tourism attraction or
19 film, digital media and music production and development facility
20 project may reasonably be expected to satisfy the criteria for final
21 approval in subsection C of this section, then the Director may
22 consider granting a preliminary approval of the eligible company and
23 the tourism attraction project pursuant to subsection B of Section
24 2357.38 of this title.

1 C. 1. For a tourism attraction project, after granting a
2 preliminary approval, the Director shall engage the services of a
3 competent consulting firm which shall submit to the Director a
4 report analyzing the data made available by the eligible company and
5 which shall collect and analyze additional information necessary to
6 determine that, in the independent judgment of the consultant, the
7 tourism attraction project will:

8 a. attract at least twenty-five percent (25%) of its
9 visitors from among persons who are not residents of
10 this state_{TL}

11 b. have costs in excess of Five Hundred Thousand Dollars
12 (\$500,000.00)_{TL}

13 c. have a significant and positive economic impact on
14 this state considering, among other factors, the
15 extent to which the tourism attraction project will
16 compete directly with existing tourism attractions in
17 this state, and the extent to which the tourism
18 attraction project will be revenue neutral to the
19 state of Oklahoma, meaning the amount by which
20 increased tax revenues from the tourism attraction
21 project will exceed the sales tax credit or income tax
22 credit allowed pursuant to Section 2357.40 of this
23 title_{TL}

- 1 d. produce sufficient revenues and public demand to be
2 operating and open to the public on a regular and
3 persistent basis⁺, and
4 e. not adversely affect existing employment in this
5 state.

6 2. For a film, digital media or music production and
7 development facility project, after granting a preliminary approval,
8 the Director shall engage the services of a competent consulting
9 firm which shall submit to the Director a report analyzing the data
10 made available by the eligible company and which shall collect and
11 analyze additional information necessary to determine that, in the
12 independent judgment of the consultant, the film, digital media or
13 music production and development facility will:

- 14 a. for music production and postproduction facilities
15 have costs in excess of One Hundred Thousand Dollars
16 (\$100,000.00), for film and digital media production
17 and postproduction facilities have costs in excess of
18 Three Hundred Fifty Thousand Dollars (\$350,000.00)⁺,
19 b. have a significant and positive economic impact on
20 this state considering, among other factors, the
21 extent to which the film, digital media or music
22 production and development facility will compete
23 directly with existing facilities in this state, and
24 the extent to which the film, digital media or music

1 production and development facility will be revenue
2 neutral to the state of Oklahoma, meaning the amount
3 by which increased tax revenues from the facility will
4 exceed the sales tax credit or income tax credit
5 allowed pursuant to Section 2357.40 of this title~~r~~,
6 and

7 c. not adversely affect existing employment in this
8 state.

9 D. The eligible company shall pay for the cost of the
10 consultant's report and shall cooperate with the consultant and
11 provide all of the data that the consultant deems necessary to make
12 a determination of this section.

13 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.40, as
14 last amended by Section 13, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
15 2009, Section 2357.40), is amended to read as follows:

16 Section 2357.40 A. Upon receiving notification from the
17 Director of the Oklahoma Tourism and Recreation Department that an
18 approved company has entered into a tourism project agreement or a
19 film, digital media and music production and development facility
20 project agreement and is entitled to the inducements provided by the
21 Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall
22 provide the approved company with forms and instructions as
23 necessary to claim those inducements.

1 B. An approved company whose agreement provides that it shall
2 expend approved costs of more than One Hundred Thousand Dollars
3 (\$100,000.00) for music production and postproduction facilities,
4 Three Hundred Fifty Thousand Dollars (\$350,000.00) for film and
5 digital media production and postproduction facilities, and more
6 than Five Hundred Thousand Dollars (\$500,000.00) for a tourism
7 attraction project but less than One Million Dollars (\$1,000,000.00)
8 shall be entitled to an income tax credit or a sales tax credit if
9 the company certifies to the Tax Commission that it has expended at
10 least the minimum amount in approved costs, and the Director
11 certifies that the approved company is in compliance with the
12 Oklahoma Tourism Development Act. The Tax Commission shall then
13 issue a tax credit memorandum to the approved company granting an
14 income tax credit or sales tax credit in the amount of ten percent
15 (10%) of the approved costs. Subsequent requests for credit for
16 additional certified approved costs in excess of the minimum amount
17 for each project as listed in this subsection but less than One
18 Million Dollars (\$1,000,000.00) shall result in an income tax credit
19 or sales tax credit in the amount of up to ten percent (10%) of the
20 approved costs, but limited to the percent of the approved costs
21 that will result in the project being revenue neutral to the State
22 of Oklahoma as determined by the report of the consulting firm
23 provided to the Director in accordance with subsection C of Section
24 2357.37 of this title. Income tax credits or sales tax credits

1 allowed pursuant to the provisions of the Oklahoma Tourism
2 Development Act shall not be transferable or assignable.

3 An approved company whose agreement provides that it shall
4 expend approved costs in excess of One Million Dollars
5 (\$1,000,000.00) shall be entitled to an income tax credit or sales
6 tax credit if the company certifies to the Tax Commission that it
7 has expended at least One Million Dollars (\$1,000,000.00) in
8 approved costs and the Director certifies that the approved company
9 is in compliance with the Oklahoma Tourism Development Act. The Tax
10 Commission shall then issue a tax credit memorandum to the approved
11 company granting an income tax credit or sales tax credit in the
12 amount of up to twenty-five percent (25%) of the approved costs, but
13 limited to the percent of the approved costs that will result in the
14 project being revenue neutral to the State of Oklahoma as determined
15 by the report of the consulting firm provided to the Director in
16 accordance with subsection C of Section 2357.37 of this title. The
17 credit on all subsequent additional certified approved costs shall
18 be in the amount of up to twenty-five percent (25%) of the costs,
19 but limited to the percent of the approved costs that will result in
20 the project being revenue neutral to the State of Oklahoma as
21 determined by the report of the consulting firm provided to the
22 Director in accordance with subsection C of Section 2357.37 of this
23 title.

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1 The Tax Commission ~~may~~ shall require proof of expenditures prior
2 to issuing a tax credit memorandum to the approved company which may
3 be satisfied by a report from an independent certified public
4 accountant. Additional credit memoranda may be issued as the
5 approved company certifies additional expenditures of approved
6 costs.

7 No tax credit memorandum shall be issued for any approved costs
8 expended after the expiration of two (2) years from the date the
9 agreement was signed by the Director and the approved company.
10 However, the Director, with the advice and consent of the Tax
11 Commission, may authorize tax credits for approved costs expended up
12 to four (4) years from the date the agreement was signed if the
13 Director determines that the failure to complete the tourism
14 attraction project within two (2) years resulted from:

15 1. Unanticipated and unavoidable delay in the construction of
16 the tourism attraction or film, digital media and music production
17 and development facility project;

18 2. An original completion date for the tourism attraction or
19 film, digital media and music production and development facility
20 project, as originally planned, which will be more than two (2)
21 years from the date construction began; or

22 3. A change in business ownership or business structure
23 resulting from a merger or acquisition.

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1 C. 1. An income tax credit allowed pursuant to the provisions
2 of this section shall be applied to the amount of income taxes due
3 from the approved company. If the amount of an income tax credit
4 allowed pursuant to the provisions of this section exceeds the
5 amount of income taxes due for the year in which the credit is
6 granted, the amount of the credit not used may be carried forward
7 for a period not to exceed ten (10) years.

8 2. A sales tax credit allowed pursuant to the provisions of
9 this section may be used to offset a portion of the reported state
10 sales tax liability of the approved company for all sales tax
11 reporting periods following the issuance of the credit memorandum
12 subject to the following limitations:

- 13 a. only increased state sales tax liability may be offset
14 by the issued credit,
- 15 b. an approved company whose agreement provides that it
16 shall expend approved costs in excess of One Million
17 Dollars (\$1,000,000.00) shall be entitled to use only
18 ten percent (10%) of the amount of each issued credit
19 to offset increased state sales tax liability during
20 each calendar year, plus the amount of any unused
21 credit carried forward from a prior calendar year, and
22 an approved company whose agreement provides that it
23 shall expend approved costs of more than the minimum
24 amount for each project as listed in this subsection

1 but less than One Million Dollars (\$1,000,000.00)
2 shall be entitled to use only twenty percent (20%) of
3 the amount of each issued credit to offset increased
4 state sales tax liability during each calendar year,
5 plus the amount of any unused credit carried forward
6 from a prior calendar year, and

7 c. all issued credit memoranda shall expire at the end of
8 the month following the expiration of the agreement as
9 provided in Section 2357.39 of this title.

10 The approved company shall have no obligation to refund or
11 otherwise return any amount of this credit to the person from whom
12 the sales tax was collected.

13 D. The Tax Commission shall promulgate rules as are necessary
14 for the proper administration of the Oklahoma Tourism Development
15 Act. The Tax Commission may also develop forms and instructions as
16 necessary for an approved company to claim the income tax credit
17 provided by the Oklahoma Tourism Development Act.

18 E. The Tax Commission shall have the authority to obtain any
19 information necessary from the approved company and the Director to
20 verify that approved companies have received the proper amounts of
21 tax credits as authorized by the Oklahoma Tourism Development Act.
22 The Oklahoma Tax Commission shall demand the repayment of any
23 credits taken in excess of the credit allowed by the Oklahoma
24 Tourism Development Act.

1 F. No income or sales tax credit authorized by this section
2 shall be granted on or after January 1, ~~2014~~ 2016.

3 SECTION 4. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 52-2-10578 CJB 04/07/10

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