

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 4455

By: Wallace and Martinez of the
House

6 and

7 Thompson and Hall of the
8 Senate

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11 COMMITTEE SUBSTITUTE

12 An Act relating to economic development; creating the
13 Large-scale Economic Activity and Development Act of
14 2022; declaring legislative findings; defining terms;
15 providing scenario where condition is deemed to
16 exist; creating investment rebate program until a
17 certain date; providing qualifying criteria;
18 providing new job creation thresholds for
19 qualification; providing for reduction of thresholds
20 under certain conditions; providing calculation
21 methodology for reduction; authorizing the
22 aggregation of certain new jobs of subsidiaries
23 toward threshold; assigning administration
24 responsibilities for rebate program; providing annual
reporting requirements; authorizing the promulgation
of rules; establishing eligibility criteria;
establishing different participation at different
capital expenditure tiers; limiting conditions where
participation may occur at certain tier; requiring
certain application submissions and evaluation;
disqualifying participation in certain program if
participating in rebate program; limiting
disqualification; limiting the calculation and
application of certain expenditures; requiring
certain notifications to certain agency; authorizing
issuances of payments under certain conditions;

1 limiting source of payments; limiting authorization
2 to award payments; providing calculation methodology
3 for certain limitation; providing for ongoing review
4 of eligibility; providing calculation methodology;
5 authorizing payments in multiple years; authorizing
6 pre-qualification and specific accounting procedures;
7 prohibiting allocations, reallocations, payments,
8 encumbrances, pre-encumbrances, and pre-
9 qualifications under certain conditions; creating the
10 Large-scale Economic Activity and Development Fund;
11 establishing fund characteristics; deeming funds
12 appropriated; providing budgeting and expenditure
13 authority, limitations, and procedures; limiting use
14 of funds; providing for transfer of unencumbered
15 funds after certain date; and providing for
16 codification.

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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 3645.1 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 "Large-scale
Economic Activity and Development Act of 2022" and shall be known
and may be cited as the "LEAD Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3645.2 of Title 68, unless there
is created a duplication in numbering, reads as follows:

The Legislature hereby finds that it is beneficial to the state
and its citizens to provide large-scale enhanced economic
development incentives to certain establishments, including, but not
limited to, those associated with an industry that creates a

1 substantial number of jobs, as such economic activity results in a
2 greater benefit to the state.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3645.3 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Large-scale Economic Activity and Development Act
7 of 2022:

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

16 2. "Available funds" means the total amount of monies
17 identified for deposit in the Large-scale Economic Activity and
18 Development Fund by law, less the cumulative total of all rebate
19 payments, pre-qualified rebate payments, encumbrances, and pre-
20 encumbrances of the Large-scale Economic Activity and Development
21 Fund;

22 3. "Establishment" means any business, no matter what legal
23 form, including, but not limited to, a sole proprietorship,
24 partnership, corporation, or limited liability corporation;

1 4. "New direct job" means full-time employment, employed by the
2 establishment, which did not exist in this state prior to the date
3 of approval, by the Oklahoma Department of Commerce, of an
4 application made pursuant to this act. A job shall be deemed to
5 exist in this state prior to approval of an application if the
6 activities and functions for which the particular job exists have
7 been ongoing at any time within six (6) months prior to such
8 approval; and

9 5. "Qualified capital expenditure" means an expenditure on
10 property in this state after May 1, 2022, depreciable under Internal
11 Revenue Code, 26 U.S.C., Section 168, that has been verified by the
12 Department of Commerce. The cost of property placed in service and
13 expenditures made on behalf of or for the benefit of an
14 establishment by a separate business entity shall be considered an
15 "expenditure" of the establishment for purposes of this definition.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3645.4 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 A. 1. There is hereby created until July 1, 2032, an
20 investment rebate program for the cost of qualified capital
21 expenditures by establishments which create not less than a
22 threshold number of new direct jobs as provided in this section.

23 2. a. The threshold number of new direct jobs required for
24 establishments to qualify and remain qualified for

1 investment rebate payments created in paragraph 1 of
2 this subsection shall be as follows:

- 3 (1) five hundred (500) new direct jobs in year one of
4 the rebate payment period,
- 5 (2) one thousand (1,000) cumulative new direct jobs
6 in year two of the rebate payment period,
- 7 (3) two thousand five hundred (2,500) cumulative new
8 direct jobs in year three of the rebate payment
9 period,
- 10 (4) four thousand (4,000) cumulative new direct jobs
11 in year four of the rebate payment period, and
- 12 (5) four thousand (4,000) cumulative new direct jobs
13 in year five of the rebate payment period.

14 b. For establishments qualifying for investment rebate
15 payments pursuant to division (2) of subparagraph a of
16 paragraph 1 of subsection E of this section, the
17 threshold numbers provided in this paragraph shall be
18 reduced proportionally to reflect the lesser capital
19 expenditure of such establishment. Such reduction
20 shall be achieved by multiplying the thresholds in
21 paragraph 2 of this subsection by a fractional
22 equivalent equal to the following: the capital
23 expenditure plan amount of the establishment
24 qualifying pursuant to division (2) of subparagraph a

1 of paragraph 1 of subsection E of this section,
2 divided by the capital expenditure plan amount of the
3 establishment qualifying pursuant to division (1) of
4 subparagraph a of paragraph 1 of subsection E of this
5 section.

6 3. New direct jobs in this state of a subsidiary of a primary
7 establishment, if such subsidiary is defined or classified in the
8 NAICS Manual under Industry Group No. 5132, 5222, or 5413, shall be
9 aggregated with the number of new direct jobs in the state of the
10 primary establishment for the purpose of determining if the
11 thresholds provided in paragraph 2 of this subsection are met.

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

14 C. By October 1 of each year, the Oklahoma Department of
15 Commerce shall submit electronically an annual report to the Speaker
16 of the Oklahoma House of Representatives, the President Pro Tempore
17 of the Oklahoma State Senate, the Chair of the Appropriations and
18 Budget Committee of the Oklahoma House of Representatives, the Chair
19 of the Appropriations Committee of the Oklahoma State Senate, and
20 the Executive Director of the Legislative Office of Fiscal
21 Transparency detailing the program and investment rebate payments.

22 D. The Oklahoma Department of Commerce and the Oklahoma Tax
23 Commission may promulgate rules to implement the provisions of this
24 act.

1 E. To be eligible for consideration for an investment rebate
2 payment awarded under the provisions of this act, a primary
3 establishment shall:

4 1. a. (1) Submit an application and documentation to the
5 Oklahoma Department of Commerce, as required by
6 the Department, outlining a capital expenditure
7 plan in this state associated with qualified
8 capital expenditures totaling no less than Three
9 Billion Six Hundred Six Million Dollars
10 (\$3,606,000,000.00), or

11 (2) Submit an application and documentation to the
12 Oklahoma Department of Commerce, as required by
13 the Department, outlining a capital expenditure
14 plan in this state associated with qualified
15 capital expenditures totaling no less than Five
16 Hundred Million Dollars (\$500,000,000.00),
17 provided a separate establishment has been
18 approved by the Oklahoma Department of Commerce
19 to participate in the investment rebate program
20 pursuant to division (1) of this subparagraph,
21 and such establishment participating pursuant to
22 division (1) of this subparagraph remains in
23 compliance with such approved application, and
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1 b. Have made qualified capital expenditures of no less
2 than twenty percent (20%) of the capital expenditure
3 plan outlined in the application submitted by the
4 primary establishment and approved by the Oklahoma
5 Department of Commerce, pursuant to the provisions of
6 this act.

7 New investment in this state of a subsidiary of a primary
8 establishment, if such subsidiary is defined or classified in the
9 NAICS Manual under Industry Group No. 5132, 5222, or 5413, shall be
10 aggregated with the investment in this state of the primary
11 establishment for the purpose of determining if the thresholds
12 provided in this paragraph are met;

13 2. Be qualified to receive payments pursuant to the provisions
14 of the Oklahoma Quality Jobs Program Act created pursuant to Section
15 3601 of Title 68 of the Oklahoma Statutes; and

16 3. Have filed all Oklahoma tax returns and tax documents
17 required by law.

18 F. 1. Notwithstanding any other provision of law, if a primary
19 establishment receives an investment rebate payment pursuant to the
20 provisions of this act, neither the qualified establishment nor its
21 subsidiaries shall be eligible to receive the credits provided for
22 in Section 2357.4 of Title 68 of the Oklahoma Statutes, in
23 connection with the project or development for which the investment
24 rebate payment was based; provided, however, the limitation provided

1 in this paragraph, on claiming credits, shall not apply to the
2 amount of qualifying capital expenditure in excess of Four Billion
3 Five Hundred Million Dollars (\$4,500,000,000.00) made by an
4 establishment on a project or development in this state.

5 2. Notwithstanding any other provision of law, no investment
6 expenditure shall be utilized for calculation purposes in a way that
7 results in the qualification of more than one establishment under
8 the provisions of this act, for investment rebate payments based on
9 the same expenditure.

10 3. Notwithstanding any other provision of law, no investment
11 rebate payment amount prequalified or pre-encumbered by the
12 Department of Commerce for an establishment qualifying for payment
13 under the provisions of division (1) of subparagraph a of paragraph
14 1 of subsection E of this section, shall be reallocated to an
15 establishment that at such time is participating under an approved
16 application pursuant to division (2) of subparagraph a of paragraph
17 1 of subsection E of this section.

18 G. 1. Except as limited by paragraph 2 of this subsection, the
19 Oklahoma Department of Commerce shall approve or disapprove claims
20 for rebates and shall notify the Tax Commission subject to the
21 limitations set forth in Section 5 of this act. Upon notification
22 of approval from the Department, the Commission shall issue payment
23 for all approved claims from funds held in the Large-scale Economic
24 Activity and Development Fund created pursuant to Section 6 of this

1 act and subject to the limitations set forth in Section 5 of this
2 act.

3 2. The Department shall disapprove all applications and claims,
4 as well as portions of applications and claims, for rebates that
5 would exceed the balance of available funds in the Large-scale
6 Economic Activity and Development Fund.

7 H. The total amount of applications approved and investment
8 rebate payments awarded under the provisions of this act shall not
9 exceed the total amount of monies designated by law for deposit to
10 the Large-scale Economic Activity and Development Fund.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3645.5 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Subject to the approval and ongoing review of the
15 eligibility application by the Oklahoma Department of Commerce, the
16 investment rebate payment authorized by this act shall be equal to
17 three and four-tenths percent (3.4%) of the cost of the qualified
18 capital expenditure in the year of expenditure; investment rebate
19 payments in the same amount shall be allowed in each of the four (4)
20 subsequent years, provided the Department has verified that the
21 establishment remains eligible for such payment in each successive
22 year based on the eligibility criteria of this act.

23 B. For the purpose of calculating the investment rebate payment
24 authorized in subsection A of this section, the "cost of the

1 qualified capital expenditure" shall include the cost of such
2 capital expenditure by the primary establishment and also the cost
3 of such capital expenditure by subsidiaries of the primary
4 establishment, provided such subsidiary is defined or classified in
5 the NAICS Manual under Industry Group No. 5132, 5222, or 5413.

6 C. The Oklahoma Department of Commerce is authorized to
7 conditionally pre-qualify and account for anticipated future
8 investment rebate payments. The Oklahoma Department of Commerce
9 shall not pre-qualify investment rebate payments, encumber funds,
10 pre-encumber funds, or otherwise allocate resources in any way that
11 would result in the allocation of investment rebate payments in
12 excess of the balance of available funds in the Large-scale Economic
13 Activity and Development Fund.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3645.6 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. There is hereby created in the State Treasury a fund for the
18 Oklahoma Tax Commission to be designated the "Large-scale Economic
19 Activity and Development Fund", also known as the "LEAD Fund". The
20 fund shall be a continuing fund, not subject to fiscal year
21 limitations, and shall consist of all monies designated for deposit
22 to the fund by law. All monies accruing to the credit of the fund
23 are hereby appropriated and may be budgeted and expended by the Tax
24 Commission for the purpose of paying rebates as provided in the

1 Large-scale Economic Activity and Development Act of 2022.
2 Expenditures from said fund shall be made upon warrants issued by
3 the State Treasurer against claims filed as prescribed by law with
4 the Director of the Office of Management and Enterprise Services for
5 approval and payment.

6 B. All unencumbered funds remaining in the Large-scale Economic
7 Activity and Development Fund upon the expiration of the Large-scale
8 Economic Activity and Development Act of 2022 shall be transferred
9 to the State Treasurer for deposit in the General Revenue Fund.

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