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**HOUSE OF REPRESENTATIVES - FLOOR VERSION**

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 4455

By: Wallace, Martinez, **Mize**,  
**West (Tammy)**, **McBride**,  
**Lepak**, **Dills**, **Hill**,  
**Pfeiffer**, and **Baker** of the  
House

and

Thompson and Hall of the  
Senate

COMMITTEE SUBSTITUTE

An Act relating to economic development; creating the Large-scale Economic Activity and Development Act of 2022; declaring legislative findings; defining terms; providing scenario where condition is deemed to exist; creating investment rebate program until a certain date; providing qualifying criteria; providing new job creation thresholds for qualification; providing for reduction of thresholds under certain conditions; providing calculation methodology for reduction; authorizing the aggregation of certain new jobs of subsidiaries toward threshold; assigning administration 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

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

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

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3645.1 of Title 68, unless there  
22 is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Large-scale  
24 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

1 limited to, those associated with an industry that creates a  
2 substantial number of jobs, as such economic activity results in a  
3 greater benefit to the state.

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

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

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

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

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

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

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

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

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

3 2. a. The threshold number of new direct jobs required for  
4 establishments to qualify and remain qualified for  
5 investment rebate payments created in paragraph 1 of  
6 this subsection shall be as follows:

7 (1) five hundred (500) new direct jobs in year one of  
8 the rebate payment period,

9 (2) one thousand (1,000) cumulative new direct jobs  
10 in year two of the rebate payment period,

11 (3) two thousand five hundred (2,500) cumulative new  
12 direct jobs in year three of the rebate payment  
13 period,

14 (4) four thousand (4,000) cumulative new direct jobs  
15 in year four of the rebate payment period, and

16 (5) four thousand (4,000) cumulative new direct jobs  
17 in year five of the rebate payment period.

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

1 paragraph 2 of this subsection by a fractional  
2 equivalent equal to the following: the capital  
3 expenditure plan amount of the establishment  
4 qualifying pursuant to division (2) of subparagraph a  
5 of paragraph 1 of subsection E of this section,  
6 divided by the capital expenditure plan amount of the  
7 establishment qualifying pursuant to division (1) of  
8 subparagraph a of paragraph 1 of subsection E of this  
9 section.

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

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

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

3 D. The Oklahoma Department of Commerce and the Oklahoma Tax  
4 Commission may promulgate rules to implement the provisions of this  
5 act.

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

- 9 1. a. (1) Submit an application and documentation to the  
10 Oklahoma Department of Commerce, as required by  
11 the Department, outlining a capital expenditure  
12 plan in this state associated with qualified  
13 capital expenditures totaling no less than Three  
14 Billion Six Hundred Six Million Dollars  
15 (\$3,606,000,000.00), or  
16 (2) Submit an application and documentation to the  
17 Oklahoma Department of Commerce, as required by  
18 the Department, outlining a capital expenditure  
19 plan in this state associated with qualified  
20 capital expenditures totaling no less than Five  
21 Hundred Million Dollars (\$500,000,000.00),  
22 provided a separate establishment has been  
23 approved by the Oklahoma Department of Commerce  
24 to participate in the investment rebate program

1                   pursuant to division (1) of this subparagraph,  
2                   and such establishment participating pursuant to  
3                   division (1) of this subparagraph remains in  
4                   compliance with such approved application, and

- 5           b.   Have made qualified capital expenditures of no less  
6           than twenty percent (20%) of the capital expenditure  
7           plan outlined in the application submitted by the  
8           primary establishment and approved by the Oklahoma  
9           Department of Commerce, pursuant to the provisions of  
10           this act.

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

17           2.   Be qualified to receive payments pursuant to the provisions  
18 of the Oklahoma Quality Jobs Program Act created pursuant to Section  
19 3601 of Title 68 of the Oklahoma Statutes; and

20           3.   Have filed all Oklahoma tax returns and tax documents  
21 required by law.

22           F. 1. Notwithstanding any other provision of law, if a primary  
23 establishment receives an investment rebate payment pursuant to the  
24 provisions of this act, neither the qualified establishment nor its



1 subsidiaries shall be eligible to receive the credits provided for  
2 in Section 2357.4 of Title 68 of the Oklahoma Statutes, in  
3 connection with the project or development for which the investment  
4 rebate payment was based; provided, however, the limitation provided  
5 in this paragraph, on claiming credits, shall not apply to the  
6 amount of qualifying capital expenditure in excess of Four Billion  
7 Five Hundred Million Dollars (\$4,500,000,000.00) made by an  
8 establishment on a project or development in this state.

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

14       3. Notwithstanding any other provision of law, no investment  
15 rebate payment amount prequalified or pre-encumbered by the  
16 Department of Commerce for an establishment qualifying for payment  
17 under the provisions of division (1) of subparagraph a of paragraph  
18 1 of subsection E of this section, shall be reallocated to an  
19 establishment that at such time is participating under an approved  
20 application pursuant to division (2) of subparagraph a of paragraph  
21 1 of subsection E of this section.

22       G. 1. Except as limited by paragraph 2 of this subsection, the  
23 Oklahoma Department of Commerce shall approve or disapprove claims  
24 for rebates and shall notify the Tax Commission subject to the

1 limitations set forth in Section 5 of this act. Upon notification  
2 of approval from the Department, the Commission shall issue payment  
3 for all approved claims from funds held in the Large-scale Economic  
4 Activity and Development Fund created pursuant to Section 6 of this  
5 act and subject to the limitations set forth in Section 5 of this  
6 act.

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

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

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

18 A. Subject to the approval and ongoing review of the  
19 eligibility application by the Oklahoma Department of Commerce, the  
20 investment rebate payment authorized by this act shall be equal to  
21 three and four-tenths percent (3.4%) of the cost of the qualified  
22 capital expenditure in the year of expenditure; investment rebate  
23 payments in the same amount shall be allowed in each of the four (4)  
24 subsequent years, provided the Department has verified that the

1 establishment remains eligible for such payment in each successive  
2 year based on the eligibility criteria of this act.

3 B. For the purpose of calculating the investment rebate payment  
4 authorized in subsection A of this section, the "cost of the  
5 qualified capital expenditure" shall include the cost of such  
6 capital expenditure by the primary establishment and also the cost  
7 of such capital expenditure by subsidiaries of the primary  
8 establishment, provided such subsidiary is defined or classified in  
9 the NAICS Manual under Industry Group No. 5132, 5222, or 5413.

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

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

21 A. There is hereby created in the State Treasury a fund for the  
22 Oklahoma Tax Commission to be designated the "Large-scale Economic  
23 Activity and Development Fund", also known as the "LEAD Fund". The  
24 fund shall be a continuing fund, not subject to fiscal year

1 limitations, and shall consist of all monies designated for deposit  
2 to the fund by law. All monies accruing to the credit of the fund  
3 are hereby appropriated and may be budgeted and expended by the Tax  
4 Commission for the purpose of paying rebates as provided in the  
5 Large-scale Economic Activity and Development Act of 2022.  
6 Expenditures from said fund shall be made upon warrants issued by  
7 the State Treasurer against claims filed as prescribed by law with  
8 the Director of the Office of Management and Enterprise Services for  
9 approval and payment.

10 B. All unencumbered funds remaining in the Large-scale Economic  
11 Activity and Development Fund upon the expiration of the Large-scale  
12 Economic Activity and Development Act of 2022 shall be transferred  
13 to the State Treasurer for deposit in the General Revenue Fund.

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15 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS  
16 AND BUDGET, dated 04/18/2022 - DO PASS, As Amended and Coauthored  
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