

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1177

By: Thompson (Roger) and Hall  
of the Senate

6 and

7 Wallace and Martinez of the  
8 House

9  
10 COMMITTEE SUBSTITUTE

11 An Act relating to economic development; creating the  
12 Perform Act; providing short title; defining terms;  
13 creating investment rebate program; setting job  
14 threshold requirements; providing for administration  
15 of rebate program; requiring certain report to  
16 specified persons; providing for promulgation of  
17 rules; providing requirements for rebate eligibility;  
18 prohibiting receipt of certain credits or rebate  
19 payments under circumstances; prohibiting approval of  
20 claims based on available funds; stipulating rebate  
21 payment procedure; authorizing certain  
22 prequalification of rebates for certain purposes;  
23 prohibiting prequalification of rebates in excess of  
24 certain fund amounts; creating the Perform Fund;  
stating sources of funds; providing for expenditures  
from fund; providing for transfer of funds to General  
Revenue Fund under certain circumstances; providing  
for codification; and declaring an emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3646.1 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Perform Act".

5 SECTION 2. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3646.2 of Title 68, unless there  
7 is created a duplication in numbering, reads as follows:

8 As used in the Perform Act:

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

17 2. "Available funds" means the total amount of monies  
18 identified for deposit in the Perform Fund pursuant to this act,  
19 less the cumulative total of all rebate payments, pre-qualified  
20 rebate payments, encumbrances, and pre-encumbrances of the Perform  
21 Fund;

22 3. "Establishment" means any business including, but not  
23 limited to, a sole proprietorship, partnership, corporation, or  
24 limited liability company;

1 4. "New direct job" means full-time employment positions that  
2 did not exist in this state prior to the date of approval of an  
3 application made pursuant to this act. A job shall be deemed to  
4 exist in this state prior to the approval date of an application if  
5 the activities and functions for which the particular job exists  
6 have been ongoing on a full-time equivalent basis at any time within  
7 six (6) months prior to the approval date; and

8 5. "Qualified capital expenditure" means an expenditure on  
9 property in this state after April 1, 2023, depreciable under  
10 Internal Revenue Code, 26 U.S.C., Section 168, that has been  
11 verified by the Oklahoma Department of Commerce.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3646.3 of Title 68, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. 1. There is hereby created until July 1, 2032, an  
16 investment rebate program for the cost of qualified capital  
17 expenditures by an establishment that creates not less than a  
18 threshold number of new direct jobs as provided in this section.

19 2. The threshold number of new direct jobs required for  
20 establishments to qualify and remain qualified for investment rebate  
21 payments created in paragraph 1 of this subsection shall be as  
22 follows:

23 a. one hundred new direct jobs for the first investment  
24 rebate payment,

- 1           b.    five hundred cumulative new direct jobs for the second
- 2                   investment rebate payment,
- 3           c.    eight hundred cumulative new direct jobs for the third
- 4                   investment rebate payment,
- 5           d.    eight hundred cumulative new direct jobs for the
- 6                   fourth investment rebate payment, and
- 7           e.    one thousand four hundred cumulative new direct jobs
- 8                   for the fifth investment rebate payment.

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

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

19           D.    The Oklahoma Department of Commerce and the Oklahoma Tax  
20 Commission may promulgate rules to implement the provisions of this  
21 act.

22           E.    To be eligible for consideration for an investment rebate  
23 payment awarded under the provisions of this act, an establishment  
24 shall:

1           1. Submit an application and documentation to the Oklahoma  
2 Department of Commerce detailing a capital expenditure plan in this  
3 state associated with qualified capital expenditures totaling no  
4 less than One Billion Dollars (\$1,000,000,000.00);

5           2. Have made qualified capital expenditures of no less than  
6 twenty percent (20%) of the capital expenditure plan outlined in the  
7 approved application;

8           3. Be qualified to receive payments pursuant to the provisions  
9 of the Oklahoma Quality Jobs Program Act created pursuant to Section  
10 3601 et seq. of Title 68 of the Oklahoma Statutes; and

11          4. Have filed all Oklahoma tax returns and tax documents  
12 required by law.

13          F. Notwithstanding any other provision of law, if an  
14 establishment receives an investment rebate payment pursuant to the  
15 provisions of this act, neither the qualified establishment nor its  
16 subsidiaries shall be eligible to receive the credits provided for  
17 in Section 2357.4 of Title 68 of the Oklahoma Statutes or the  
18 investment rebate payments provided pursuant to the Large-scale  
19 Economic Activity and Development Act of 2022, in Section 3645.1 et  
20 seq. of Title 68 of the Oklahoma Statutes, in connection with the  
21 project or development for which the investment rebate payment was  
22 based.

23          G. Notwithstanding any other provision of law, no investment  
24 expenditure shall be utilized for calculation purposes that result

1 in the qualification of more than one establishment under the  
2 provisions of this act, for investment rebate payments based on the  
3 same expenditure.

4 H. Except as limited by subsection I of this section, the  
5 Oklahoma Department of Commerce shall approve or disapprove claims  
6 for rebates and shall notify the Tax Commission. Upon notification  
7 of approval from the Department, the Commission shall issue payment  
8 for all approved claims from funds held in the Perform Fund created  
9 pursuant to Section 5 of this act and subject to the limitations set  
10 forth in Section 4 of this act.

11 I. The Department shall disapprove all or any portion of  
12 applications and claims for rebates that would exceed the balance of  
13 available funds in the Perform Fund. The total amount of  
14 applications approved and investment rebate payments awarded under  
15 the provisions of this act shall not exceed the total amount of  
16 monies designated by law for deposit to the Perform Fund.

17 SECTION 4. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3646.4 of Title 68, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. Subject to the approval and ongoing review of the  
21 eligibility application by the Oklahoma Department of Commerce, the  
22 investment rebate payment authorized by this act shall be equal to  
23 ten percent (10%) of the cost of the qualified capital expenditures  
24 to be paid upon claims made by the establishment as provided for in

1 subsection B of this section. An establishment shall not be  
2 eligible to submit more than one claim per calendar year.

3 B. Investment rebate payments shall be made as follows:

4 1. Upon the first claim of the establishment, ten percent (10%)  
5 of the cumulative qualified capital expenditures made by the  
6 establishment, with the first investment rebate payment not to  
7 exceed Thirty-six Million Dollars (\$36,000,000.00);

8 2. Upon the second claim of the establishment, ten percent  
9 (10%) of the qualified capital expenditures made by the  
10 establishment subsequent to the first claim, plus any preceding  
11 qualified capital expenditures for which an investment rebate  
12 payment was not made due to the limitation provided in paragraph 1  
13 of this subsection, with the second investment rebate payment not to  
14 exceed Thirty-six Million Dollars (\$36,000,000.00) plus the  
15 difference, if any, between the investment rebate payment made upon  
16 the first claim and Thirty-six Million Dollars (\$36,000,000.00);

17 3. Upon the third claim of the establishment, ten percent (10%)  
18 of the qualified capital expenditures made by the establishment,  
19 subsequent to the second claim plus any preceding qualified capital  
20 expenditures for which an investment rebate payment was not made due  
21 to the limitation provided in paragraph 2 of this subsection, with  
22 the third investment rebate payment not to exceed Thirty-six Million  
23 Dollars (\$36,000,000.00) plus the difference, if any, between the  
24

1 investment rebate payment made upon the second claim and the  
2 limitation provided in paragraph 2 of this subsection;

3 4. Upon the fourth claim of the establishment, ten percent  
4 (10%) of the qualified capital expenditures made by the  
5 establishment subsequent to the third claim, plus any preceding  
6 qualified capital expenditures for which an investment rebate  
7 payment was not made due to the limitation provided in paragraph 3  
8 of this subsection, with the fourth investment rebate payment not to  
9 exceed Thirty-six Million Dollars (\$36,000,000.00) plus the  
10 difference, if any, between the investment rebate payment made upon  
11 the third claim and the limitation provided in paragraph 3 of this  
12 subsection; and

13 5. Upon the fifth claim of the establishment, ten percent (10%)  
14 of the qualified capital expenditures made by the establishment  
15 subsequent to the fourth claim, plus any preceding qualified capital  
16 expenditures for which an investment rebate payment was not made due  
17 to the limitation provided in paragraph 4 of this subsection, with  
18 the fifth investment rebate payment not to exceed Thirty-six Million  
19 Dollars (\$36,000,000.00) plus the difference, if any, between the  
20 investment rebate payment made upon the fourth claim and the  
21 limitation provided in paragraph 4 of this subsection.

22 C. The Department is authorized to conditionally pre-qualify  
23 and account for anticipated future investment rebate payments. The  
24 Department shall not pre-qualify investment rebate payments,



1 encumber funds, pre-encumber funds, or otherwise allocate resources  
2 in any way that would result in the allocation of investment rebate  
3 payments in excess of the balance of available funds in the Perform  
4 Fund.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3646.5 of Title 68, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. There is hereby created in the State Treasury a fund for the  
9 Oklahoma Tax Commission to be designated the "Perform Fund". The  
10 fund shall be a continuing fund, not subject to fiscal year  
11 limitations, and shall consist of all monies designated for deposit  
12 to the fund by law. All monies accruing to the credit of the fund  
13 are hereby appropriated and may be budgeted and expended by the Tax  
14 Commission for the purpose of paying rebates as provided in the  
15 Perform Act. Expenditures from the fund shall be made upon warrants  
16 issued by the State Treasurer against claims filed as prescribed by  
17 law with the Director of the Office of Management and Enterprise  
18 Services for approval and payment.

19 B. All unencumbered funds remaining in the Perform Fund upon  
20 the expiration of the investment rebate program provided in  
21 subsection A of Section 3 of this act shall be transferred to the  
22 State Treasurer for deposit in the General Revenue Fund.

23 SECTION 6. It being immediately necessary for the preservation  
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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