

OKLAHOMA STATE SENATE
JOINT
COMMITTEE REPORT

May 9, 2023

JOINT COMMITTEE ON APPROPRIATIONS AND BUDGET

SB1177

By: Thompson (Roger) et al of the Senate and Wallace et al of the House

Title: Public finance. Specifying certain duty of Director of Office of Management and Enterprise Services. Emergency.

Recommendation: **DO PASS AS AMENDED BY CS**

AYES: 11

Burns, Dugger, Hall, Haste, Jech, Pugh, Rader, Stephens, Thompson (K), Thompson (R), Woods

NAYS: 4

Floyd, Hicks, Kirt, Matthews

CONSTITUTIONAL PRIVILEGE: 0

Senator Roger Thompson, Chair

Committee Substitute, motion by Senator Thompson (R) - Adopted (Request No: 2053)

OKLAHOMA HOUSE OF REPRESENTATIVES
COMMITTEE REPORT

JOINT COMMITTEE ON APPROPRIATIONS AND BUDGET COMMITTEE

SB1177

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Thompson (Roger) et al of the Senate

Title: Public finance. Specifying certain duty of Director of Office of Management and Enterprise Services. Emergency.

Coauthored By:

Recommendation: **DO PASS AS AMENDED BY CS**

Amendments:

1. Committee Substitute Attached


Chr.
Representative Kevin Wallace

YEAS: 30

Bashore, Bennett, Blancett, Boatman, Fetgatter, Ford, Goodwin, Hasenbeck, Hill, Kannady, Kerbs, Lawson, Lepak, Lowe (D), Martinez, McEntire, Miller, Moore, Munson, Newton, Nichols, Osburn, Pfeiffer, Provenzano, Ranson, Sterling, Strom, Vancuren, Wallace, West (T)

NAYS: 2

Boles, Kendrix

CONSTITUTIONAL PRIVILEGE: 0

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1177

6 By: Thompson (Roger) and Hall
7 of the Senate

8 and

9 Wallace and Martinez of the
10 House

11 COMMITTEE SUBSTITUTE

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