An Act

ENROLLED SENATE
BILL NO. 1177

By: Thompson (Roger) and Hall of the Senate

and

Wallace and Martinez of the House

An Act relating to economic development; creating the Perform Act; providing short title; defining terms; creating investment rebate program; setting job threshold requirements; providing for administration of rebate program; requiring certain report to specified persons; providing for promulgation of rules; providing requirements for rebate eligibility; prohibiting receipt of certain credits or rebate payments under circumstances; prohibiting approval of claims based on available funds; stipulating rebate payment procedure; authorizing certain prequalification of rebates for certain purposes; 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.

SUBJECT: Perform Act

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 3646.1 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 "Perform Act".

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

As used in the Perform Act:

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

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

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

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

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

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

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

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

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

b. five hundred cumulative new direct jobs for the second investment rebate payment,

c. eight hundred cumulative new direct jobs for the third investment rebate payment,

d. eight hundred cumulative new direct jobs for the fourth investment rebate payment, and

e. one thousand four hundred cumulative new direct jobs for the fifth investment rebate payment.

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

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

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

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

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

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

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

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

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

G. Notwithstanding any other provision of law, no investment expenditure shall be utilized for calculation purposes that result in the qualification of more than one establishment under the provisions of this act, for investment rebate payments based on the same expenditure.

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

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

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

A. Subject to the approval and ongoing review of the eligibility application by the Oklahoma Department of Commerce, the investment rebate payment authorized by this act shall be equal to ten percent (10%) of the cost of the qualified capital expenditures to be paid upon claims made by the establishment as provided for in subsection B of this section. An establishment shall not be eligible to submit more than one claim per calendar year.

B. Investment rebate payments shall be made as follows:

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

2. Upon the second claim of the establishment, ten percent (10%) of the qualified capital expenditures made by the establishment subsequent to the first claim, plus any preceding qualified capital expenditures for which an investment rebate payment was not made due to the limitation provided in paragraph 1 of this subsection, with the second investment rebate payment not to exceed Thirty-six Million Dollars ($36,000,000.00) plus the

difference, if any, between the investment rebate payment made upon the first claim and Thirty-six Million Dollars ($36,000,000.00);

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

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

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

C. The Department is authorized to conditionally pre-qualify and account for anticipated future investment rebate payments. The Department shall not pre-qualify investment rebate payments, encumber funds, pre-encumber funds, or otherwise allocate resources in any way that would result in the allocation of investment rebate payments in excess of the balance of available funds in the Perform Fund.

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

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

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

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

Passed the Senate the 10th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of May, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 15th

day of May, 20 23, at 4:16 o'clock p. M.

By: Jimmie Cherry

Approved by the Governor of the State of Oklahoma this 17th

day of May, 20 23, at 11:38 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 17th

day of May, 20 23, at 3:32 o'clock p M.

By: [illegible]