An Act

ENROLLED HOUSE
BILL NO. 1953

By: McNiel, Pittman, Kirby, Sherrer and Ownbey of the House

and

Mazzei, Sparks and Rice of the Senate

An Act relating to economic development; making legislative findings; creating the Oklahoma Quick Action Closing Fund; providing for sources of revenue; providing for expenditure of monies from fund; prescribing method for payment of expenditures; prescribing procedures; prescribing requirements for certain business establishments; requiring analysis by the Oklahoma Department of Commerce; requiring analysis of potential impact of business activity; imposing duties upon the Director of the Oklahoma Department of Commerce; prescribing certain selection criteria; requiring administrative rules; requiring evaluation to be submitted to President Pro Tempore of the Oklahoma State Senate and Speaker of the Oklahoma House of Representatives; providing for certain agreements; prescribing content of agreements; prohibiting use of monies for political purposes; requiring certain information to be available through website; providing exemption for proprietary information; providing for character of monies used for capital improvements for purposes of federal bankruptcy law; providing for repayment of certain amounts; providing for cessation of provisions based upon deposit, appropriation or apportionment to Oklahoma Quick Action Closing Fund; and providing for codification.

SUBJECT: Economic Development

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 48.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds the following to be beneficial goals of the state: attracting, retaining and providing favorable conditions for the recruitment and growth of certain high-impact business projects or facilities which provide widespread economic benefits to the public through high-quality employment opportunities or capital investment in such projects or facilities and net economic benefits to the state.

B. The Legislature further finds that there exists serious competition for these projects and facilities, and that without a workable closing fund, Oklahoma continues to be at a competitive disadvantage in vying with states that have such a fund for attracting and/or retaining these business projects.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 48.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Commerce to be designated the Oklahoma Quick Action Closing Fund. The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of:

1. All monies apportioned or allocated to the fund pursuant to law;

2. Any amounts appropriated by the Legislature to the fund;

3. Interest earned on the investment of money in the fund; and

4. Gifts, grants, and other donations received for the fund.

B. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Governor for the purposes of economic development and related infrastructure development in instances in which expenditure of such funds would likely be a determining factor in locating a high-impact business project or facility in Oklahoma or in retaining such project or facility within the state. 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 State Finance for approval and payment.

C. In order to qualify for any funds from the Oklahoma Quick Action Closing Fund, the establishment making application shall be engaged in a business activity described by a North American Industry Classification System (NAICS) Code used to define eligibility for incentive payments from the Oklahoma Quality Jobs Program Act as defined in Section 3603 of Title 68 of the Oklahoma Statutes or a business activity described by Section 3603 of Title 68 of the Oklahoma Statutes or be engaged in a "basic industry" used to define eligibility for incentive payments from the 21st Century Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68 of the Oklahoma Statutes.

D. The Governor shall not approve payments from the Oklahoma Quick Action Closing Fund unless the Department of Commerce has conducted a complete analysis of the potential impact of the applicant's business activity which shall include, but not be limited to:

1. The number of jobs to be created by a new business establishment;

2. The number of jobs to be retained by an existing business establishment;

3. The average salary of jobs to be created by a new establishment;

4. The average salary of jobs to be retained by an existing business establishment;

5. The total capital investment to be made by the business establishment;

6. The likelihood of other business establishments locating within the same vicinity or within the state as a result of the business activity to be conducted by the entity to receive payments from the Oklahoma Quick Action Closing Fund;

7. The impact on the economy of the area or community in which the business activity of the applicant is or will be conducted; and

8. Such other factors as the Governor and the Department of Commerce determine to be relevant.

E. The Oklahoma Department of Commerce shall administer the Oklahoma Quick Action Closing Fund, and expenditures from the fund shall be recommended by the Director of the Oklahoma Department of Commerce to the Governor after a thorough evaluation of selected projects or facilities. The Director of the Oklahoma Department of Commerce shall only recommend expenditures that the Director determines are expected to result in a net economic benefit to the state through the following:

1. The creation of new jobs which offer a basic health benefit plan, as defined in the Oklahoma Quality Jobs Program Act;

2. The maintenance of existing jobs which are at a risk for termination;

3. Investment in new real property, plant or equipment or in the improvement or retooling of existing plant or equipment; or

4. Additional revenues in either ad valorem, income or sales and use taxes.

F. The Oklahoma Department of Commerce shall develop rules for the process of reviewing proposed expenditures from the Oklahoma Quick Action Closing Fund and for the determination of whether or not proposed expenditures meet the criteria identified in subsection E of this section. Criteria shall include requirements for economic impact, local participation in the project, capital investment and average wage thresholds.

G. Upon receipt of an evaluation that recommends an expenditure from the Oklahoma Quick Action Closing Fund from the Director of the Oklahoma Department of Commerce, the Governor shall provide the evaluation and recommendation to the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives before giving final approval for the expenditure on the project. The Executive Office of the Governor shall recommend final approval of an expenditure on a project pursuant to consultation with the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives.

H. Upon approval by the Governor, the Oklahoma Department of Commerce shall enter into an agreement that sets forth the

conditions for payment of monies from the Oklahoma Quick Action Closing Fund. The agreement must include:

1. The total amount of funds awarded;

2. The performance conditions that must be met to obtain the award, including, but not limited to, net new employment in the state, average salary, and total capital investment;

3. If appropriate, a baseline of current service and measure of enhanced capability;

4. The methodology of validating performance;

5. The schedule of payments from the fund, and claw-back provisions for failure to meet performance conditions; and

6. A requirement that no monies paid from the Oklahoma Quick Action Closing Fund shall be used by a recipient or any other person or entity for purposes of any political contribution to or on behalf of any candidate or for the support of or opposition to any measure including but not limited to an initiative petition or referendum.

I. The Department of Commerce shall make available on its website or other website dedicated for this purpose a complete disclosure of all payments made from the Oklahoma Quick Action Closing Fund. The disclosure shall include a description of the expenditures made by the business establishment with the payments made from the fund. No proprietary information of the business establishment shall be subject to the requirements of this subsection.

J. If any or all of the amount to be awarded is used to build a capital improvement:

1. The funds used for the capital improvement shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law; and

2. If the capital improvement is sold, the recipient of the award shall:

a. repay the state the money awarded to pay for the capital improvement, with interest at the rate and

according to the other terms provided by the agreement, and

b. share with the state a proportionate amount of any profit realized from the sale.

K. If, as of the date certain provided in the agreement, the award recipient has not used monies awarded for the intended purposes, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms and any such amounts shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law.

L. The provisions of this act shall cease to have the force and effect of law on the July 1 date of the sixth fiscal year after the first fiscal year for which any funds are deposited to, appropriated to, apportioned to or otherwise transferred to the Oklahoma Quick Action Closing Fund.

Passed the House of Representatives the 16th day of May, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 18th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 19th

day of May, 2011,

at 2:12 o'clock PM.

By: Jessica R. Bogan

Approved by the Governor of the State of Oklahoma the 24th day of

May, 2011, at 11:05 o'clock AM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

24th day of May, 2011,

at 4:05 o'clock P M.

By: Michelle R. Day