An Act

ENROLLED SENATE
BILL NO. 1176

By: Thompson (Roger) and Hall of the Senate

and

Wallace and Martinez of the House

An Act relating to economic development; amending Sections 4 and 6, Chapter 66, O.S.L. 2022 (68 O.S. Supp. 2022, Sections 3645.4 and 3645.6), which relate to the Large-scale Economic Activity and Development Act of 2022; modifying certain job threshold requirement; requiring transfer of funds if certain commitment is not received by the Oklahoma Department of Commerce by certain date; updating statutory language; updating statutory references; and declaring an emergency.

SUBJECT: Large-scale Economic Activity and Development Act of 2022

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

SECTION 1. AMENDATORY Section 4, Chapter 66, O.S.L. 2022 (68 O.S. Supp. 2022, Section 3645.4), is amended to read as follows:

Section 3645.4. A. 1. There is hereby created until July 1, 2032, an investment rebate program for the cost of qualified capital expenditures by establishments which create not less than a threshold number of new direct jobs as provided in this section.

2. a. 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:

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

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

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

(4) ~~four thousand (4,000)~~ three thousand five hundred (3,500) cumulative new direct jobs in year four of the rebate payment period, and

(5) ~~four thousand (4,000)~~ three thousand five hundred (3,500) cumulative new direct jobs in year five of the rebate payment period.

b. For establishments qualifying for investment rebate payments pursuant to division (2) of subparagraph a of paragraph 1 of subsection E of this section, the threshold numbers provided in this paragraph shall be reduced proportionally to reflect the lesser capital expenditure of such establishment. Such reduction shall be achieved by multiplying the thresholds in paragraph 2 of this subsection by a fractional equivalent equal to the following: the capital expenditure plan amount of the establishment qualifying pursuant to division (2) of subparagraph a of paragraph 1 of subsection E of this section, divided by the capital expenditure plan amount of the establishment qualifying pursuant to division (1) of subparagraph a of paragraph 1 of subsection E of this section.

3. New direct jobs in this state of a subsidiary of a primary establishment, if such subsidiary is defined or classified in the NAICS Manual under Industry Group No. 5132, 5222, or 5413, shall be aggregated with the number of new direct jobs in the state of the

primary establishment for the purpose of determining if the thresholds provided in paragraph 2 of this subsection are met.

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 Speaker of the ~~Oklahoma~~ House of Representatives, the President Pro Tempore of the ~~Oklahoma State~~ Senate, the Chair of the Appropriations and Budget Committee of the ~~Oklahoma~~ House of Representatives, the Chair of the Appropriations Committee of the ~~Oklahoma State~~ Senate, 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~~ the Large-scale Economic Activity and Development Act of 2022 (LEAD Act).

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

1. a. (1) Submit an application and documentation to the Oklahoma Department of Commerce, as required by the Department, outlining a capital expenditure plan in this state associated with qualified capital expenditures totaling no less than Three Billion Six Hundred Six Million Dollars ($3,606,000,000.00), or

(2) Submit an application and documentation to the Oklahoma Department of Commerce, as required by the Department, outlining a capital expenditure plan in this state associated with qualified capital expenditures totaling no less than Five Hundred Million Dollars ($500,000,000.00), provided a separate establishment has been approved by the Oklahoma Department of Commerce to participate in the investment rebate program pursuant to division (1) of this subparagraph,

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

b. Have made qualified capital expenditures of no less than twenty percent (20%) of the capital expenditure plan outlined in the application submitted by the primary establishment and approved by the Oklahoma Department of Commerce, pursuant to the provisions of ~~this act~~ the LEAD Act.

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

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

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

F. 1. Notwithstanding any other provision of law, if a primary establishment receives an investment rebate payment pursuant to the provisions of ~~this act~~ the LEAD 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, in connection with the project or development for which the investment rebate payment was based; provided, however, the limitation provided in this paragraph, on claiming credits, shall not apply to the amount of qualifying capital expenditure in excess of Four Billion Five Hundred Million Dollars ($4,500,000,000.00) made by an establishment on a project or development in this state.

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

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

G. 1. Except as limited by paragraph 2 of this subsection, the Oklahoma Department of Commerce shall approve or disapprove claims for rebates and shall notify the Tax Commission subject to the limitations set forth in Section ~~5 of this act~~ 3645.5 of this title. Upon notification of approval from the Department, the Commission shall issue payment for all approved claims from funds held in the Large-scale Economic Activity and Development Fund created pursuant to Section ~~6 of this act~~ 3645.6 of this title and subject to the limitations set forth in Section ~~5 of this act~~ 3645.5 of this title.

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

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

SECTION 2. AMENDATORY Section 6, Chapter 66, O.S.L. 2022 (68 O.S. Supp. 2022, Section 3645.6), is amended to read as follows:

Section 3645.6. A. There is hereby created in the State Treasury a fund for the Oklahoma Tax Commission to be designated the "Large-scale Economic Activity and Development Fund", also known as the "LEAD 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 Large-scale Economic Activity and Development Act of 2022. Expenditures from ~~said~~ such 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 Large-scale Economic Activity and Development Fund upon the expiration of the Large-scale Economic Activity and Development Act of 2022 shall be transferred to the State Treasurer for deposit in the General Revenue Fund.

C. If the Oklahoma Department of Commerce has not received a binding commitment from a primary establishment for an investment determined by the Department to qualify for payment under the provisions of division (1) of subparagraph a of paragraph 1 of subsection E of Section 3645.4 of this title by April 15, 2023, all unencumbered funds remaining in the Large-scale Economic Activity and Development Fund shall be transferred to the State Treasurer for deposit in the General Revenue Fund of the State Treasury for the fiscal year ending June 30, 2022.

SECTION 3. 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 28th day of February, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 2nd day of March, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 2nd

day of March, 20 23, at 11:35 o'clock a. M.

By: Sumer Curry

Approved by the Governor of the State of Oklahoma this 2nd

day of March, 20 23, at 2:35 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 2nd

day of March, 20 23, at 2:39 o'clock p. M.

By: Brian Bunger