

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2131

 By: Echols

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to state government; creating the
10 Oklahoma Tourism Development Act; stating legislative
11 findings; defining terms; providing for creation of
12 standards for applications for inducement to
13 companies and their tourism attraction projects;
14 providing application contents; directing the
15 Executive Director of the Oklahoma Tourism and
16 Recreation Department to review and preliminarily
17 approve applications under certain conditions;
18 requiring analyzation of data by consulting firm;
19 directing applicant company to pay cost of consultant
20 report; providing for creation of standards for
21 preliminary and final approval; requiring review of
22 consultant report; allowing for final approval under
23 certain conditions; authorizing agreements between
24 the Oklahoma Tourism and Recreation Department and
 the approved company with respect to the tourism
 project; providing for agreement provisions;
 requiring written consent to transfer or assign
 agreement; providing liability for certain payments
 to the Oklahoma Tax Commission; requiring the
 Executive Director provide copy of agreement to the
 Tax Commission; directing Tax Commission to provide
 inducement claim forms; providing sales tax credits
 for projects with certain costs; requiring proof of
 expenditures; limiting tax credit amount; limiting
 tax credit issuance to certain time period; providing
 exceptions; authorizing sales tax credit to be used
 for certain purpose; directing promulgation of rules;
 authorizing Tax Commission to obtain certain
 information; prohibiting granting of sales tax credit

1 after certain date; providing exception; providing
2 for codification; and providing an effective date.

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4
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2391 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the "Oklahoma
10 Tourism Development Act".

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2392 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 The Legislature hereby finds:

15 1. That the general welfare and material well-being of the
16 citizens of the State of Oklahoma depend, in large measure, upon the
17 development of tourism attractions in this state;

18 2. That it is in the best interests of the citizens of this
19 state to induce the creation of new or the expansion of existing
20 tourism attractions within this state in order to advance the public
21 purposes of relieving unemployment by preserving and creating jobs
22 that would not exist if not for the inducements to be offered by
23 this state to approved companies, and by preserving and creating
24

1 sources of tax revenues for the support of public services provided
2 by this state;

3 3. That the authority prescribed by this act, and the purposes
4 to be accomplished under the provisions of this act, are proper
5 governmental and public purposes for which public funds may be
6 expended; and

7 4. That the inducement of the creation or expansion of tourism
8 attraction projects is of paramount importance, mandating that the
9 provisions of this act be liberally construed and applied in order
10 to advance public purposes.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2393 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in the Oklahoma Tourism Development Act:

15 1. "Agreement" means an agreement entered into pursuant to
16 Section 6 of this act, by and between the Executive Director of the
17 Oklahoma Tourism and Recreation Department and an approved company,
18 with respect to a tourism attraction project;

19 2. "Approved company" means any eligible company that is
20 seeking to undertake a tourism attraction project and is approved by
21 the Executive Director pursuant to Sections 5 and 6 of this act;

22 3. "Approved costs" means:

23 a. obligations incurred for labor and to vendors,
24 contractors, subcontractors, builders and suppliers in

1 connection with the acquisition, construction,
2 equipping and installation of a tourism attraction
3 project,

4 b. the costs of acquiring real property or rights in real
5 property in connection with a tourism attraction
6 project, and any costs incidental thereto,

7 c. the costs of contract bonds and of insurance of all
8 kinds that may be required or necessary during the
9 course of the acquisition, construction, equipping and
10 installation of a tourism attraction project which are
11 not paid by the vendor, supplier or contractor, or
12 otherwise provided,

13 d. all costs of architectural and engineering services
14 including, but not limited to, estimates, plans and
15 specifications, preliminary investigations, and
16 supervision of construction and installation, as well
17 as for the performance of all the duties required by
18 or consequent to the acquisition, construction,
19 equipping and installation of a tourism attraction
20 project,

21 e. all costs required to be paid under the terms of any
22 contract for the acquisition, construction, equipping
23 and installation of a tourism attraction project,
24

1 f. all costs required for the installation of utilities
2 in connection with a tourism attraction project
3 including, but not limited to, water, sewer, sewage
4 treatment, gas, electricity and communications, and
5 including off-site construction of utility extensions
6 paid for by the approved company, and

7 g. all other costs comparable with those described in
8 this paragraph;

9 4. "Director" means the Executive Director of the Oklahoma
10 Tourism and Recreation Department or the Executive Director's
11 designated representative;

12 5. "Eligible company" means any corporation, limited liability
13 company, partnership, sole proprietorship, business trust or any
14 other entity, operating or intending to operate a tourism attraction
15 project, whether owned or leased, within this state that meets the
16 standards promulgated by the Executive Director pursuant to Section
17 4 of this act;

18 6. "Final approval" means the action taken by the Executive
19 Director authorizing the eligible company to receive inducements
20 under Section 7 of this act;

21 7. "Increased state sales tax liability" means that portion of
22 an approved company's reported state sales tax liability resulting
23 from taxable sales of goods and services to its customers at the
24 tourist attraction which exceeds the reported state sales tax

1 liability for sales to its customers for the same month in the
2 calendar year immediately preceding the certification;

3 8. "Inducements" means the sales tax credit as prescribed in
4 Section 7 of this act;

5 9. "Preliminary approval" means the action taken by the
6 Executive Director conditioned upon final approval by the Executive
7 Director upon satisfaction by the eligible company of the
8 requirements of this act;

9 10. a. "Tourism attraction" means:

- 10 (1) a cultural or historical site,
- 11 (2) a recreational or entertainment facility,
- 12 (3) an area of natural phenomena or scenic beauty,
- 13 (4) a theme park,
- 14 (5) an amusement or entertainment park,
- 15 (6) an indoor or outdoor play or music show,
- 16 (7) a botanical garden,
- 17 (8) a cultural or educational center, or
- 18 (9) a destination hotel whose location and amenities,
19 including but not limited to upscale dining,
20 recreation and entertainment, make the hotel
21 itself a destination for tourists;

22 b. A tourism attraction shall not include:

- 23 (1) lodging facilities, unless:

24

1 (a) the facilities constitute a portion of a
2 tourism attraction project and represent
3 less than fifty percent (50%) of the total
4 approved costs of the tourism attraction
5 project, or

6 (b) the lodging facilities are a part of a
7 destination hotel,

8 (2) facilities that are primarily devoted to the
9 retail sale of goods, unless the goods are
10 created at the site of the tourism attraction
11 project or if the sale of goods is incidental to
12 the tourism attraction project,

13 (3) facilities that are not open to the general
14 public,

15 (4) facilities that do not serve as a likely
16 destination where individuals who are not
17 residents of this state would remain overnight in
18 commercial lodging at or near the tourism
19 attraction project,

20 (5) facilities owned by the State of Oklahoma or a
21 political subdivision of this state, or

22 (6) facilities established for the purpose of
23 conducting legalized gambling. However, a
24 facility regulated under the Oklahoma Horse

1 Racing Act, Sections 200 through 209 of Title 3A
2 of the Oklahoma Statutes, shall be a tourism
3 attraction for purposes of this act for any
4 approved project as outlined in subparagraph a of
5 this paragraph or for an approved project
6 relating to pari-mutuel racing at the facility
7 and not for establishing a casino or for offering
8 casino-style gambling; and

9 11. "Tourism attraction project" or "project" means:

- 10 a. the acquisition, including the acquisition of real
11 estate by leasehold interest with a minimum term of
12 ten (10) years, construction and equipping of a
13 tourism attraction, and
- 14 b. the construction and installation of improvements to
15 facilities necessary or desirable for the acquisition,
16 construction and installation of a tourism attraction,
17 including, but not limited to:
- 18 (1) surveys, and
- 19 (2) installation of utilities, which may include:
- 20 (a) water, sewer, sewage treatment, gas,
21 electricity, communications and similar
22 facilities, and
- 23 (b) off-site construction of utility extensions
24 to the boundaries of the real estate on

1 which the facilities are located, all of
2 which shall be used to improve the economic
3 situation of the approved company in a
4 manner that shall allow the approved company
5 to attract tourists.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2394 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The Executive Director of the Oklahoma Tourism and
10 Recreation Department, with approval of the Oklahoma Tourism and
11 Recreation Commission, shall establish standards for the making of
12 applications for inducements to eligible companies and their tourism
13 attraction projects by the promulgation of rules in accordance with
14 the Administrative Procedures Act.

15 B. With respect to each eligible company making an application
16 to the Executive Director for inducements, and with respect to the
17 tourism attraction described in the application, the Executive
18 Director shall make inquiries and request materials of the applicant
19 that shall include, but shall not be limited to:

20 1. Marketing plans for the project that target individuals who
21 are not residents of this state;

22 2. A description and location of the project;

23 3. Capital and other anticipated expenditures for the project
24 that indicate that the total cost of the project shall exceed the

1 minimum amount set forth in subsection C of this section and the
2 anticipated sources of funding therefor;

3 4. The anticipated employment and wages to be paid at the
4 project;

5 5. Business plans which indicate the average number of days in
6 a year in which the project will be in operation and open to the
7 public, if applicable; and

8 6. The anticipated revenues and expenses generated by the
9 project.

10 Based upon a review of these materials, if the Executive
11 Director determines that the eligible company and the tourism
12 attraction may reasonably be expected to satisfy the criteria for
13 final approval in subsection C of this section, then the Executive
14 Director may consider granting a preliminary approval of the
15 eligible company and the tourism attraction project pursuant to
16 subsection B of Section 5 of the Oklahoma Tourism Development Act.

17 C. For a tourism attraction project, after granting a
18 preliminary approval, the Executive Director shall engage the
19 services of a competent consulting firm which shall submit to the
20 Executive Director a report analyzing the data made available by the
21 eligible company and which shall collect and analyze additional
22 information necessary to determine that, in the independent judgment
23 of the consultant, the tourism attraction project will:

24

1 1. Attract at least twenty-five percent (25%) of its visitors
2 from among persons who are not residents of this state;

3 2. Have costs in excess of Five Hundred Thousand Dollars
4 (\$500,000.00);

5 3. Have a significant and positive economic impact on this
6 state considering, among other factors, the extent to which the
7 tourism attraction project will compete directly with existing
8 tourism attractions in this state, and the extent to which the
9 tourism attraction project will be revenue-neutral to the State of
10 Oklahoma, meaning the amount by which increased tax revenues from
11 the tourism attraction project will exceed the sales tax credit
12 allowed pursuant to Section 7 of this act;

13 4. Produce sufficient revenues and public demand to be
14 operating and open to the public on a regular and persistent basis;
15 and

16 5. Not adversely affect existing employment in this state.

17 D. The eligible company shall pay for the cost of the
18 consultant's report and shall cooperate with the consultant and
19 provide all of the data that the consultant deems necessary to make
20 a determination pursuant to this section.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2395 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. The Executive Director of the Oklahoma Tourism and
2 Recreation Department, with the approval of the Oklahoma Tourism and
3 Recreation Commission, shall establish standards for preliminary
4 approval and final approval of eligible companies and their projects
5 by the promulgation of rules in accordance with the Administrative
6 Procedures Act.

7 B. The Executive Director may give preliminary approval by
8 designating an eligible company as a preliminarily approved company
9 and preliminarily authorizing the undertaking of the tourism
10 attraction project.

11 C. The Executive Director shall review the report of the
12 consultant prepared pursuant to subsection C of Section 4 of the
13 Oklahoma Tourism Development Act and other information that has been
14 made available to the Executive Director in order to assist the
15 Executive Director in determining whether the tourism attraction
16 project will further the purposes of this act.

17 D. The criteria for final approval of eligible companies and
18 tourism attraction projects shall include, but shall not be limited
19 to, the criteria set forth in subsection C of Section 4 of this act.

20 E. After a review of the relevant materials, the consultant's
21 report, other information made available to the Executive Director,
22 and completion of other inquiries, the Executive Director may give
23 final approval to the eligible company's application for a tourism
24 attraction project and may grant to the eligible company the status

1 of an approved company. The decision reached by the Executive
2 Director may be appealed by the eligible company to the Tourism and
3 Recreation Commission. The decision of the Tourism and Recreation
4 Commission shall constitute the final administrative decision of the
5 Oklahoma Tourism and Recreation Department.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2396 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Upon granting final approval, the Executive Director of the
10 Oklahoma Tourism and Recreation Department may enter into an
11 agreement with an approved company with respect to its tourism
12 attraction project. The terms and provisions of each agreement
13 shall include, but shall not be limited to:

14 1. The amount of approved costs, which shall be determined by
15 negotiations between the Executive Director and the approved
16 company;

17 2. A date certain by which the approved company shall have
18 completed the tourism attraction project. Within three (3) months
19 of the completion date, the approved company shall document the
20 actual cost of the project through a certification of the costs by
21 an independent certified public accountant acceptable to the
22 Executive Director; and

23 3. The following provisions:
24

1 a. the term of the agreement shall be ten (10) years from
2 the later of:

3 (1) the date of the final approval of the tourism
4 attraction project, or

5 (2) the completion date specified in the agreement,
6 if the completion date is within two (2) years of
7 the date of the final approval of the tourism
8 attraction project. However, the term of the
9 agreement may be extended for up to two (2)
10 additional years by the Executive Director, with
11 the advice and consent of the Oklahoma Tax
12 Commission, if the Executive Director determines
13 that the failure to complete the tourism
14 attraction project within two (2) years resulted
15 from:

16 (a) unanticipated and unavoidable delay in the
17 construction of the tourism attraction
18 project,

19 (b) an original completion date for the tourism
20 attraction project, as originally planned,
21 which will be more than two (2) years from
22 the date construction began, or

23 (c) a change in business structure resulting
24 from a merger or acquisition,

1 b. in any tax year during which an agreement is in
2 effect, if the amount of sales tax to be remitted by
3 the approved company exceeds the sales tax credit
4 available to the approved company, then the approved
5 company shall pay the excess to this state as sales
6 tax,

7 c. within forty-five (45) days after the end of each
8 calendar year the approved company shall supply the
9 Executive Director with such reports and
10 certifications as the Executive Director may request
11 demonstrating to the satisfaction of the Executive
12 Director that the approved company is in compliance
13 with the provisions of the Oklahoma Tourism
14 Development Act, and

15 d. the approved company shall not receive an inducement
16 with respect to any calendar year if:

17 (1) in any calendar year following the fourth year of
18 the agreement, the tourism attraction project
19 fails to attract at least fifteen percent (15%)
20 of its visitors from among persons who are not
21 residents of this state, or

22 (2) in any calendar year following the first year of
23 the project or the tourism attraction project is
24

1 not operating and open to the public on a regular
2 and consistent basis.

3 B. The agreement shall not be transferable or assignable by the
4 approved company without the written consent of the Executive
5 Director.

6 C. If the approved company utilizes inducements which are
7 subsequently disallowed then the approved company will be liable for
8 the payment to the Tax Commission of all taxes resulting from the
9 disallowance of the inducements plus applicable penalties and
10 interest.

11 D. The Executive Director shall provide a copy of each
12 agreement entered into with an approved company to the Tax
13 Commission.

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2397 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Upon receiving notification from the Executive Director of
18 the Oklahoma Tourism and Recreation Department that an approved
19 company has entered into a tourism project agreement and is entitled
20 to the inducements provided by the Oklahoma Tourism Development Act,
21 the Oklahoma Tax Commission shall provide the approved company with
22 forms and instructions as necessary to claim those inducements.

23 B. An approved company whose agreement provides that it shall
24 expend approved costs of more than Five Hundred Thousand Dollars

1 (\$500,000.00) for a tourism attraction project but less than One
2 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax
3 credit if the company certifies to the Tax Commission that it has
4 expended at least the minimum amount in approved costs, and the
5 Executive Director certifies that the approved company is in
6 compliance with this act. The Tax Commission shall then issue a tax
7 credit memorandum to the approved company granting a sales tax
8 credit in the amount of up to ten percent (10%) of the approved
9 costs, but limited to the percent of the approved costs that will
10 result in the project being revenue-neutral to the State of Oklahoma
11 as determined by the Tax Commission. Subsequent requests for credit
12 for additional certified approved costs in excess of the minimum
13 amount for each project as listed in this subsection but less than
14 One Million Dollars (\$1,000,000.00) shall result in a sales tax
15 credit in the amount of up to ten percent (10%) of the approved
16 costs, but limited to the percent of the approved costs that will
17 result in the project being revenue-neutral to the State of Oklahoma
18 as determined by the Tax Commission. Sales tax credits allowed
19 pursuant to the provisions of this act shall not be transferable or
20 assignable.

21 An approved company whose agreement provides that it shall
22 expend approved costs in excess of One Million Dollars
23 (\$1,000,000.00) shall be entitled to a sales tax credit if the
24 company certifies to the Tax Commission that it has expended at

1 least One Million Dollars (\$1,000,000.00) in approved costs and the
2 Executive Director certifies that the approved company is in
3 compliance with this act. The Tax Commission shall then issue a tax
4 credit memorandum to the approved company granting a sales tax
5 credit in the amount of up to twenty-five percent (25%) of the
6 approved costs, but limited to the percent of the approved costs
7 that will result in the project being revenue-neutral to the State
8 of Oklahoma as determined by the Tax Commission. The credit on all
9 subsequent additional certified approved costs shall be in the
10 amount of up to twenty-five percent (25%) of the costs, but limited
11 to the percent of the approved costs that will result in the project
12 being revenue-neutral to the State of Oklahoma as determined by the
13 Tax Commission. The cumulative credits provided pursuant to this
14 act shall not exceed Fifteen Million Dollars (\$15,000,000.00) per
15 year.

16 The Tax Commission shall require proof of expenditures prior to
17 issuing a tax credit memorandum to the approved company which may be
18 satisfied by a report from an independent certified public
19 accountant. Additional credit memoranda may be issued as the
20 approved company certifies additional expenditures of approved
21 costs.

22 No tax credit memorandum shall be issued for any approved costs
23 expended after the expiration of two (2) years from the date the
24 agreement was signed by the Executive Director and the approved

1 company. However, the Executive Director, with the advice and
2 consent of the Tax Commission, may authorize tax credits for
3 approved costs expended up to four (4) years from the date the
4 agreement was signed if the Executive Director determines that the
5 failure to complete the tourism attraction project within two (2)
6 years resulted from:

7 1. Unanticipated and unavoidable delay in the construction of
8 the tourism attraction;

9 2. An original completion date for the tourism attraction, as
10 originally planned, which will be more than two (2) years from the
11 date construction began; or

12 3. A change in business ownership or business structure
13 resulting from a merger or acquisition.

14 C. A sales tax credit allowed pursuant to the provisions of
15 this section may be used to offset a portion of the reported state
16 sales tax liability of the approved company for all sales tax
17 reporting periods following the issuance of the credit memorandum
18 subject to the following limitations:

19 1. Only increased state sales tax liability may be offset by
20 the issued credit;

21 2. An approved company whose agreement provides that it shall
22 expend approved costs in excess of One Million Dollars

23 (\$1,000,000.00) shall be entitled to use only ten percent (10%) of
24 the amount of each issued credit to offset increased state sales tax

1 liability during each calendar year, plus the amount of any unused
2 credit carried forward from a prior calendar year, and an approved
3 company whose agreement provides that it shall expend approved costs
4 of more than the minimum amount for each project as listed in this
5 subsection but less than One Million Dollars (\$1,000,000.00) shall
6 be entitled to use only twenty percent (20%) of the amount of each
7 issued credit to offset increased state sales tax liability during
8 each calendar year, plus the amount of any unused credit carried
9 forward from a prior calendar year; and

10 3. All issued credit memoranda shall expire at the end of the
11 month following the expiration of the agreement as provided in
12 Section 6 of the Oklahoma Tourism Development Act.

13 The approved company shall have no obligation to refund or
14 otherwise return any amount of this credit to the person from whom
15 the sales tax was collected.

16 D. The Tax Commission shall promulgate rules as are necessary
17 for the proper administration of the Oklahoma Tourism Development
18 Act. The Tax Commission may also develop forms and instructions as
19 necessary for an approved company to claim the sales tax credit
20 provided by this act.

21 E. The Tax Commission shall have the authority to obtain any
22 information necessary from the approved company and the Executive
23 Director to verify that approved companies have received the proper
24 amounts of tax credits as authorized by this act. The Oklahoma Tax

1 Commission shall demand the repayment of any credits taken in excess
2 of the credit allowed by this act.

3 F. No sales tax credit authorized by this section shall be
4 granted on or after January 1, 2021. Notwithstanding the foregoing,
5 an approved company that has entered into a tourism attraction
6 project agreement with the Tourism and Recreation Department
7 pursuant to Section 6 of this act prior to January 1, 2021, shall
8 continue to be entitled to claim any sales tax credit authorized by
9 this section as contemplated by the tourism project agreement.

10 SECTION 8. This act shall become effective November 1, 2017.

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12 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
13 03/02/2017 - DO PASS, As Amended and Coauthored.

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