

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2093

By: McCorkell

COMMITTEE SUBSTITUTE

An Act relating to economic development; enacting the Saving Quality Jobs Act; providing short title; stating legislative intent; defining terms; authorizing certain establishments to claim certain payments; providing criteria for establishments; specifying period for payments; providing for computation of benefit amount; providing for maximum payment; providing for apportionment procedure; imposing certain limitations for purposes of computations; requiring applications; prescribing conditions for receipt of benefits pursuant to Saving Quality Jobs Act; providing for actions by Oklahoma Tax Commission; creating Saving Quality Jobs Premium Payment Fund; providing for deposit of certain monies in fund; prescribing conditions related to fund; providing claims procedure; providing for verification; providing for payments to establishments meeting certain criteria based on economic impact; prescribing procedures related to payment of benefits; providing computation of payments; prescribing procedures related to high impact projects; creating the High Impact Projects Payments Fund; providing for deposit of monies in fund; prescribing conditions related to fund; prescribing limitations upon availability of certain credits and exemptions; providing exception to conditions; requiring promulgation of rules; prescribing penalties for violations; providing for felony penalty; providing for codification; and declaring an emergency.

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 3701 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 12 of this act shall be known and may be cited as the "Saving Quality Jobs Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3702 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to support establishments:

- a. that hold promise of retaining and gaining jobs when the State of Oklahoma is in competitive situations with other states or nations,
- b. when there is a direct threat to the existing revenue base and wealth of the state because existing jobs are at risk, and
- c. provided, however, new jobs must be created in conjunction with provisions of incentives to retain at-risk jobs;

2. The State of Oklahoma provide appropriate incentives to support establishments that hold the promise of growth in strategic industries that yield higher long-term benefits for job retention and increasing the wealth of the state and which create competitive advantages for the State of Oklahoma in attracting and retaining industries and thus jobs;

3. The State of Oklahoma provide appropriate incentives to establishments that locate in areas of the state that would be highly impacted statistically in their labor forces when establishments locate in such an area;

4. The State of Oklahoma provide appropriate incentives to establishments that reduce continuing unemployment for citizens by employing the chronically unemployed;

5. The Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and

6. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3703 of Title 68, unless there is created a duplication in numbering, reads as follows:

Unless otherwise indicated in this act, the definitions contained in Section 3603 of Title 68 of the Oklahoma Statutes shall apply to the Saving Quality Jobs Act.

Other definitions of the Saving Quality Jobs Act are:

1. "At-risk jobs" are those jobs of a qualifying establishment, presently existing in Oklahoma which the Director of the Department of Commerce finds would be lost within the state based on changes in establishment structure; consolidation attempts of establishments; and other such factors as determined on a case-by-case basis, unless incentives are offered. Provided, that the Department shall limit the number of at-risk jobs for each establishment so that the number of at-risk jobs shall not exceed the number of new direct jobs anticipated to be created. However, under no circumstances shall the number of at-risk jobs exceed two hundred (200) jobs for any single establishment;

2. "Chronically unemployed" means those persons who have been unemployed for at least twenty-six (26) weeks of the previous fifty-two (52) weeks and as further defined by rule by the Department of Commerce;

3. "Fiscal year" means July 1 through June 30;

4. "High impact projects" means those projects described in Section 8 of this act;

5. "Premium net benefit rate" means the percentage rate determined by the Oklahoma Department of Commerce and utilized by the Oklahoma Tax Commission to calculate quarterly premium payments which are further described in Section 5 of this act; and

6. "Premium payments" means those payments made in addition to incentive payments to approved establishments under the terms of the Saving Quality Jobs Act which are calculated in accordance with the provisions of Section 5 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3704 of Title 68, unless there is created a duplication in numbering, reads as follows:

An establishment which is qualified for incentive payments pursuant to the Oklahoma Quality Jobs Program Act shall be entitled to claim quarterly premium payments for a period of three (3) years, to be calculated as provided by Section 5 of this act, if such establishment meets either of the following qualifications:

1. It is certified by the Oklahoma Department of Commerce and confirmed by the Governor that the establishment has demonstrated that its existing jobs are at risk. In order to qualify for the premium, the establishment must create one new job for each at-risk job saved. In such cases, the premium payment shall be calculated as provided in Section 5 of this act.

The Department shall specify the type of application, information or documentation necessary to satisfy the requirement of this paragraph; or

2. An establishment is engaged in an industry which is strategically important to the general economic development of this state due to its impact upon factors such as labor, other establishments in the same or related industries, demand for component or material supplies and other factors which may be determined by rule of the Department of Commerce. Provided, that those industries classified and defined in the Standard Industrial Classification (SIC) Manual, latest version, as follows shall be considered strategic for purposes of this section:

- a. Electronic components, n.e.c., SIC 3675,
- b. Miscellaneous plastics products, SIC 3070,
- c. Central administrative offices, (no SIC Code),
- d. Instruments and related products, SIC 38,
- e. Chemicals including pharmaceuticals, SIC 28,
- f. Engineering and architectural services, SIC 871,
- g. Aircraft and parts manufacturing, SIC 372,
- h. Research and testing services, SIC 873, and
- i. Any other industry so designated by rule of the Department of Commerce.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3705 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in this act may claim premium payments for a three-year period from the Oklahoma Tax Commission pursuant to the provisions of this act in an amount equal to the premium net benefit rate multiplied by the actual gross payroll of the establishment's new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission. The premium net benefit rate of the establishment shall be calculated by the Department of Commerce by dividing the maximum allowable premium payment for the establishment, which shall be calculated as follows, by the anticipated quarterly gross payroll of the establishment:

1. The maximum allowable premium payment to an establishment which qualifies for premium payments pursuant to the provisions of paragraph 1 of Section 4 of this act shall be calculated to be equal to one-tenth of one percent (1/10 of 1%) of the estimated net direct state benefits, apportioned over the three-year payment period of this act as provided by subsection B of this section, for each qualifying at-risk job which is retained by an establishment. Provided, that the number of retained at-risk jobs utilized for said calculation shall not exceed the number of new direct jobs added by the establishment pursuant to the Quality Jobs Program Act, or two hundred (200) jobs whichever is less. Additionally, the maximum allowable premium payment shall be reduced as set out in paragraphs 3 and 4 of this subsection.

2. The maximum allowable premium payment of an establishment which qualifies for premium payments pursuant to the provisions of paragraph 2 of Section 4 of this act shall be calculated to be equal to twenty percent (20%) of the estimated net direct state benefits, apportioned over the three-year payment period of this act as provided by subsection B of this section. Provided, the maximum allowable premium payment shall be reduced as set out in paragraphs 3 and 4 of this subsection.

3. Under no circumstances may the combined premium payment and quality job incentive payment made to an establishment exceed five percent (5%) of the gross payroll of the establishment. If the sum of the establishment's maximum premium payment as a percent of anticipated gross payroll and the establishment's net benefit rate exceed five percent (5%) of gross payroll, then the Department of Commerce shall reduce the establishment's allowable premium payment such that the combined premium payment and quality job incentive payment shall equal five percent (5%) of gross payroll.

4. The maximum aggregate amount of premium payments, to all qualified establishments in any fiscal year of the State of Oklahoma, which are authorized pursuant to this act is Two Million Dollars (\$2,000,000.00). For the purposes of this paragraph, projected premium payments of each qualified establishment shall be aggregated by the Department of Commerce to determine if said limit has been reached. Notwithstanding any other provision of law, when the maximum Two Million Dollars (\$2,000,000.00) of projected premium payments provided by this act have been obligated to specific establishments for a given fiscal year, then no additional application for premium payments may be considered by the Department of Commerce for that fiscal year and in any event no premium payments in excess of said Two Million Dollars (\$2,000,000.00) shall be paid by the Tax Commission within any fiscal year.

B. Upon calculating an establishment's allowable possible premium payment as provided by subsection A of this section, the Department of Commerce shall apportion said total amount among each of the three (3) years of the payment period of this act. Said apportionment shall be made in the same proportions as the first three (3) years of an establishment's annual estimated net direct state benefits pursuant to the Oklahoma Quality Jobs Program Act.

C. In order to receive premium payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and

shall contain such information as may be required by the Department to determine if the applicant is qualified.

D. In order to qualify for and remain qualified to receive premium payments, the establishment applying must have applied for, be qualified for and remain qualified for incentive payments pursuant to the Oklahoma Quality Jobs Program Act and meet all qualifications and requirements of this act.

E. The Department shall determine if the applicant is qualified to receive premium payments.

F. If the applicant is determined to be qualified by the Department of Commerce, the Department shall communicate such information to the Tax Commission, including the establishment's premium net benefit rate and the maximum allowable premium payment amount during the three-year payment period, when supplying information required by the Oklahoma Quality Jobs Program Act. The Tax Commission may require the establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for premium payments. The establishment may be audited by the Tax Commission to verify such eligibility.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3706 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Saving Quality Jobs Premium Payment Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying the premium net benefit rate provided by the Department of Commerce by the gross payroll of each qualified establishment. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Saving Quality Jobs Act.

Liability of the State of Oklahoma to make the premium payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3707 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive a premium payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim.

B. As soon as practicable after such verification, the Tax Commission shall issue a warrant to the establishment in the amount of the premium net benefit rate multiplied by the actual gross payroll for the calendar quarter in accordance with Section 5 of this act. Provided, that the premium payments received by an establishment shall not exceed the total maximum allowable premium payment over the entire three-year period as communicated to the Tax Commission by the Department of Commerce. If an establishment is entitled to a quarterly payment pursuant to both the Oklahoma Quality Jobs Program Act and this act, the Tax Commission may issue one warrant for both.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3708 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act, Sections 3602 through 3609 of Title 68 of the Oklahoma Statutes, except that the establishment:

1. Has an annual gross payroll for new direct jobs, as defined in the Oklahoma Quality Jobs Program Act, projected by the Department of Commerce to equal at least One Million Dollars (\$1,000,000.00) but less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the anticipated date of receipt of first incentive payment; and

2. a. Provides a number of new direct jobs that is equal to or greater than one percent (1%) of the total labor force of the county in which the establishment locates, or

b. Establishes to the satisfaction of the Department of Commerce that at least thirty of the new direct jobs are initially filled by the "chronically unemployed" within the first year of beginning operations, may qualify for payments for the High Impact Projects Payments Fund created in Section 9 of this act pursuant to approval by the Oklahoma Department of Commerce. Such establishments shall be deemed "high impact projects".

B. High impact projects, upon approval of the Department of Commerce, may receive quarterly incentive payments for a six-year period from the Oklahoma Tax Commission in an amount which shall be equal to two and one-half percent (2.5%) of payroll for new direct jobs.

C. No more than five (5) projects approved pursuant to subparagraph b of paragraph 2 of subsection A of this section may be approved per state fiscal year by the Department of Commerce.

Provided, in the event a minimum annual payroll of One Million Dollars (\$1,000,000.00) for new direct jobs is not achieved by a high impact project establishment described in this section within three (3) years, payments will cease and will not be resumed.

D. If a high impact project continues to qualify and receives payments beyond the initial three-year period, actual verified gross payroll for four (4) consecutive calendar quarters thereafter for the remaining three (3) years of eligibility to receive payments must equal or exceed One Million Dollars (\$1,000,000.00) for the high impact project or payments will cease

and will not resume until the actual verified gross payroll for four (4) consecutive calendar quarters, within the time permitted for the high impact project to receive payments from the fund, equals or exceeds such amount.

E. Upon approval of such high impact project to receive payments, the Department of Commerce shall notify the Oklahoma Tax Commission in writing and shall provide it with a copy of the application and the approval. The Tax Commission may require the establishment implementing the high impact project to submit additional information as is necessary for the Tax Commission to verify continuing eligibility for receipt of incentive payments. Any information submitted in response to such inquiries shall be considered a part of the documentation for qualification and shall be subject to audit by the Tax Commission.

F. As soon as practicable after receipt of departmental approval of a high impact project, the Tax Commission shall notify the establishment performing the high impact project of procedures and requirements to receive warrants. Once the establishment has complied, the Tax Commission shall issue quarterly warrants as long as eligibility continues.

G. Once a high impact project is approved, an agreement shall be deemed to exist between the establishment implementing the high impact project and the State of Oklahoma requiring continuing payments to be made as established pursuant to this section and within the limitations herein.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3709 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "High Impact Projects Payments Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying two and one-half percent (2.5%) by the gross payroll for new direct jobs

for each establishment approved pursuant to Section 8 of this act. All of the amounts deposited in such fund may be used and expended by the Tax Commission for the purposes and in the amounts authorized by Section 8 of this act. Liability of the State of Oklahoma for payments made pursuant to Section 8 of this act is limited to the balance contained in the fund created by this section.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3710 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, except as provided in subsection B of this section, if a qualified establishment receives an incentive payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Paragraphs 11 and 12 of Section 1357 of Title 68 of the Oklahoma Statutes;

2. Subsection (H) of Section 1359 of Title 68 of the Oklahoma Statutes;

3. Section 2357.4 of Title 68 of the Oklahoma Statutes;

4. Section 2357.7 of Title 68 of the Oklahoma Statutes;

5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

6. Section 2357.22 of Title 68 of the Oklahoma Statutes;

7. Section 2357.31 of Title 68 of the Oklahoma Statutes;

8. Section 54003 of Title 68 of the Oklahoma Statutes;

9. Section 54006 of Title 68 of the Oklahoma Statutes; or

10. Section 625.1 of Title 36 of the Oklahoma Statutes.

B. The provisions of this section do not apply to a contractor or subcontractor which produces a product or component to be used by an establishment in connection with the activity for which an incentive payment is or will be received pursuant to the

provisions of this act, unless such contractor or subcontractor is a qualified establishment under this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3711 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Department of Commerce and the Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3712 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and 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.

44-2-9011

MAH