

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 574

By: Fisher, Milacek and
Gustafson of the Senate

and

Roach, Smith (Dale),
Tyler, Webb, Phillips,
Braddock, Hiett,
Steidley, Rice, Perry,
Adair, Satterfield, Boyd
(Laura), Hutchison and
Pope (Clay) of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economic development; providing short title; stating legislative intent and providing for certain construction; defining terms; providing for five-year incentive payment for establishments meeting certain qualifications; requiring application be made to Oklahoma Department of Commerce and providing for forms and information related thereto; requiring Department determine if applicant meets certain requirements and stating requirements; requiring Department notify Oklahoma Tax Commission upon qualifying applicant; providing for additional information; requiring report continued eligibility to Tax Commission; providing for audit; providing for certain agreement; stating procedure for filing reports to claim incentive payment; providing for determination that requirements have been met and for incentive payments; allowing incentive payment for subsequent four years unless establishment becomes ineligible; creating special fund for certain purpose; limiting liability of state to fund balance; providing for promulgation of rules; providing penalty; deeming establishment receiving incentive payment and its contractors and subcontractors ineligible to receive certain tax credits and exemptions; requiring certain analysis and report; providing for codification; and providing an effective date.

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 3901 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 "Small Employer Quality Jobs Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3902 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 the creation of quality jobs, particularly by small businesses, in basic industries in this state;

2. The incentives provided be directly related to quality jobs created as a result of a business locating or expanding in this state;

3. 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

4. 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 3903 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Basic industry" means a basic industry as defined under the Oklahoma Quality Jobs Program Act in subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes. Provided, for the purposes of this act, the determination required by division (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes shall be made by the Oklahoma Department of Commerce and not the Incentive Approval Committee;

2. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation;

3. "Full-time employment" means employment for twenty-five (25) hours per week or more, which has a minimum six-month duration during any twelve-month period;

4. "Gross payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs; and

5. "New direct job" means full-time employment which did not exist in this state prior to the date of approval, by the Oklahoma Department of Commerce, of an application made pursuant to this act. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at anytime within six (6) months prior to such approval.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3904 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 receive annual incentive payments for a five-year period from the Oklahoma Tax Commission pursuant to the provisions of this act in an amount equal to five percent (5%) multiplied by the actual gross payroll of new direct jobs as verified by the Tax Commission.

B. In order to receive incentive 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.

C. Before approving an application for incentive payments, the Oklahoma Department of Commerce must first determine that the applicant meets the following requirements:

1. Be engaged in a basic industry;

2. Has no more than ninety full-time employees in this state on the date of application nor an average of more than ninety

full-time employees in this state during the four calendar quarters immediately preceding the date of application;

3. Has a projected minimum employment, as determined by the Department, of ten new direct jobs within twelve (12) months of the date of application;

4. Has or will have within three (3) months of the date of application, as determined by the Department, sales of at least seventy-five percent (75%) of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government;

5. Will pay at least eighty percent (80%) of the individuals it employs in new direct jobs an annualized wage which equals or exceeds one hundred fifty percent (150%) of the per capita personal income as that percentage is determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data for the county in which the new direct jobs are located. For the purposes of this paragraph, health care premiums paid by the applicant for individuals in new direct jobs shall be included in the annualized wage;

6. Has a basic health benefit plan which, as determined by the Department, meets the elements established under divisions (1) through (7) of subparagraph b of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes and which will be offered to individuals within ninety (90) days of employment in a new direct job;

7. Is not receiving nor has been approved to receive incentive payments under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former Military Facility Development Act; and

8. Is not qualified for approval of an application for incentive payments under the Oklahoma Quality Jobs Program Act.

D. The Oklahoma Department of Commerce shall determine if an applicant is qualified to receive the incentive payment. Upon qualifying the applicant, the Department shall notify the Tax Commission and shall provide it with a copy of the application,

and approval which shall provide the maximum total incentives which may be paid to the applicant during the five-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 5 of this act. Establishments may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring incentive payments to be made for a five-year period as long as the establishment retains its eligibility and within the limitations of the Small Employer Quality Jobs Incentive Act which existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3905 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. As soon as practicable after the end of the calendar quarter in which the application of the establishment is approved by the Oklahoma Department of Commerce, the establishment shall begin filing quarterly reports with the Oklahoma Tax Commission that specify the actual number and individual gross payroll of new direct jobs for the establishment and such other information as required by the Oklahoma Tax Commission. The Tax Commission shall verify the actual individual gross payroll for new direct jobs. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request additional information from the establishment as may be necessary or may request the establishment to revise its reports.

The establishment shall continue filing such reports during the five-year incentive period or until it is no longer qualified to receive incentive payments. Such reports shall constitute a claim for annual incentive payments by the establishment.

2. Upon receipt of quarterly reports for the initial twelve months of the incentive period and for each subsequent twelve

month period thereafter, the Tax Commission shall determine if the establishment has met the following requirements:

- a. created and or maintained a minimum of ten new direct jobs, and
- b. paid at least eighty percent (80%) of the individuals it employed in new direct jobs an annualized wage which equaled or exceeded one hundred fifty percent (150%) of the per capita personal income as that percentage was determined by the Oklahoma Department of Commerce upon approval of the application.

3. Upon determining that an establishment has met the requirements of paragraph 2 of this subsection for the initial twelve months of the incentive period and provided that the establishment continues to meet the requirements specified in subsection C of Section 4 of this act, the Tax Commission shall issue a warrant to the establishment in an amount which shall be equal to five percent (5%) of gross payroll of new direct jobs actually paid by the establishment.

B. Except as provided in subsection C of this section, the annual incentive payment provided for in subsection A of this section shall be allowed in each of the four subsequent twelve-month periods.

C. 1. An establishment which does not meet the requirements of paragraph 2 of subsection A of this section within twelve (12) months of the date of its application shall be ineligible to receive any incentive payments pursuant to its application and approval.

2. An establishment which at any time during the four subsequent twelve-month periods does not meet the requirements of paragraph 2 of subsection A of this section, or the requirements specified in subsection C of Section 4 of this act, shall be ineligible to receive an incentive payment during the twelve-month period in which such requirements are not met.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3906 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 "Small Employer Quality Jobs Incentive Payment Fund". The 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 estimated by the Tax Commission to be sufficient to pay incentive payments claimed pursuant to the provisions of Section 5 of this act. 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 Small Employer Quality Jobs Incentive Act. The liability of the State of Oklahoma to make incentive 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 3907 of Title 68, unless there is created a duplication in numbering, reads as follows:

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3908 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, invoice, 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. The fine for a violation of this provision shall not be less than One Thousand Dollars (\$1,000.00) nor more than Fifty Thousand Dollars (\$50,000.00). 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 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3909 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, 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 14 and 15 of Section 1357 of Title 68 of the Oklahoma Statutes;
2. Paragraph 8 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;
10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
11. Subsections C and D of Section 2357.59 of Title 68 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3910 of Title 68,

unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce shall prepare triennially a report which shall include, but not be limited to, documentation of the new direct jobs created under the Small Employer Quality Jobs Incentive Act and a fiscal analysis of the costs and benefits of the act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor no later than March 1, 2001, and every three (3) years thereafter. The report may be used for the purpose of determining whether to continue or sunset the Small Employer Quality Jobs Incentive Act.

SECTION 11. This act shall become effective January 1, 1998.

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