STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1289

By: Fisher and Henry of the Senate

and

Roach of the House

COMMITTEE SUBSTITUTE

An Act relating to Oklahoma Quality Jobs Program Act; amending Section 4, Chapter 275, O.S.L. 1993, as last amended by Section 2, Chapter 258, O.S.L. 1997, and Section 6, Chapter 275, O.S.L. 1993, as amended by Section 3, Chapter 349, O.S.L. 1995 (68 O.S. Supp. 1997, Sections 3604 and 3606), which relate to incentive payment procedures; modifying reference; prescribing certain requirements for establishments locating activity in certain areas; authorizing certain costs to be included in calculation; providing exception to requirements for activity conducted in opportunity zones of high-employment county; defining term; requiring report; providing for termination of incentive payments for establishments not complying with certain requirement; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 275, O.S.L. 1993, as last amended by Section 2, Chapter 258, O.S.L. 1997 (68 O.S. Supp. 1997, Section 3604), is amended to read as follows:

Section 3604. A. An establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security 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. Except as otherwise provided by subsection D or E of this section, in order to qualify to receive such payments, the establishment applying shall be required to:

1. Be engaged in a basic industry;

2. Have an annual gross payroll for new direct jobs projected by the Department ~~of Commerce~~ to equal or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment; and

3. Have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. In order to qualify to receive incentive payments as authorized by ~~this act~~ the Oklahoma Quality Jobs Program Act, an establishment engaged in an activity described under:

1. Any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual shall be required to:

a. have an annual gross payroll for new direct jobs projected by the Department ~~of Commerce~~ to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, 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, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and

b. have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs;

2. Major Group 87 of the Standard Industrial Classification (SIC) Manual, as described in division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

a. have an annual gross payroll for new direct jobs projected by the Department ~~of Commerce~~ to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and makes, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection C of Section 3603 of this title, 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, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and

b. have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs;

3. Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, as described in division (5) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

a. have an annual gross payroll for new direct jobs projected by the Department ~~of Commerce~~ to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment, and

b. have a number of full-time equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

E. An establishment which locates its principal business activity on a site consisting of at least ten (10) acres which has been determined to be contaminated by any substance regulated by a federal or state statute governing environmental conditions for real property and which is a federal Superfund removal site, is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code or has been formally deferred to the state in lieu of listing on the National Priorities List, shall qualify for incentive payments irrespective of:

1. Its actual gross payroll; or

2. The number of full-time-equivalent employees engaged in new direct jobs.

In order to qualify for the incentive payments pursuant to this subsection, the establishment shall conduct the activity resulting in at least eighty percent (80%) of its total annual gross revenue, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection with respect to environmental conditions for real property. The establishment shall be subject to all other requirements of the Oklahoma Quality Jobs Program Act other than the exemptions provided by this subsection.

F. <u>In order to qualify to receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in addition to other qualifications specified herein, an establishment which locates its principal business activity in a high-employment county shall be required to pay at least eighty percent (80%) of the</u>

individuals it employs in new direct jobs an annualized wage which equals or exceeds Twenty-eight Thousand Eight Hundred Dollars ($28,800.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment. For purposes of this subsection, the amount of health care premiums paid by the establishment for employees in new direct jobs or family members of such employees shall be included in the amount of the annualized wage. Provided, the provisions of this subsection shall not apply to an establishment which locates its principal business activity in an opportunity zone of a high-employment county. As used in this subsection:

1. "High-employment county" means a county in which:

a. the unemployment rate does not exceed three and one-half percent (3.5%) for the year prior to the year in which the establishment applies to receive incentive payments, as certified by the Oklahoma Employment Security Commission, and

b. the population for the county, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, exceeds three hundred fifty thousand (350,000) persons; and

2. "Opportunity zone" means one or more census tracts in which, according to the most recent federal decennial census, at least thirty percent (30%) of the residents have annual gross household incomes from all sources below the poverty level established by the U.S. Bureau of the Census.

An establishment locating its principal business activity in a high employment county, whether or not such location is in an opportunity zone, shall be required to submit an annual report to the Oklahoma Department of Commerce containing such information as the Department may require to determine if the establishment is in compliance with the provisions of this subsection.

G. The Oklahoma Department of Commerce shall determine if the applicant is qualified to receive incentive payments.

~~G.~~ H. If the applicant is determined to be qualified by the Department, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

~~H.~~ I. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of ~~this act~~ the Oklahoma Quality Jobs Program Act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 3606 of this title. The establishment 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 the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

SECTION 2. AMENDATORY Section 6, Chapter 275, O.S.L. 1993, as amended by Section 3, Chapter 349, O.S.L. 1995 (68 O.S. Supp. 1997, Section 3606), is amended to read as follows:

Section 3606. A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive an incentive 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. If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 3604 of this title within three (3) years of the date of the first incentive payment, or does not equal or exceed the applicable total required by Section 3604 of this title at any other time during the ten-year period after the date the first payment was made, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in Section 3604 of this title. <u>If the annualized wage required for an establishment locating its principal business activity in a high employment county pursuant to the provisions of subsection F of Section 3604 of this title does not equal or exceed Twenty-eight Thousand Eight Hundred Dollars ($28,800.00) within three (3) years of the date of the first incentive payment, the incentive payments shall not be made and shall not be resumed until such time as such requirements are met.</u> Provided, in no event shall incentive

payments, cumulatively, exceed the estimated net direct state benefits.

C. An establishment that has qualified pursuant to Section 3604 of this title may receive payments only in accordance with the provisions under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of this title.

D. As soon as practicable after such verification, the Tax Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

SECTION 3. This act shall become effective November 1, 1998.

46-2-11106 MAH