

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 574

By: Fisher and Mickle of the
Senate

and

Roach of the House

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 businesses meeting certain qualifications; requiring application to Oklahoma Department of Commerce prior to certain date and providing for forms and information related thereto; stating qualifications; requiring certain determination; requiring notification of Oklahoma Tax Commission; providing for additional information and reporting; providing for audit; providing for certain agreement; stating procedure for filing claim for incentive payment; providing for verification; specifying terms of incentive payment; allowing incentive payment to be claimed for subsequent four years if certain conditions are met; creating special fund for certain purpose; limiting

liability of state to fund balance; providing for promulgation of rules; providing penalties; deeming business 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 2357.61 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 2357.62 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 2357.63 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;

2. "Full-time employment" means permanent employment for twenty-five (25) hours per week or more;

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

4. "New direct job" means full-time employment which did not exist in this state prior to calendar year for which the incentive payment will be claimed pursuant to 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 2357.64 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A business which meets the qualifications specified in this act may receive from the Oklahoma Tax Commission an incentive payment for a five-year period pursuant to the provisions of Section 5 of this act.

B. In order to receive the incentive payment, a business shall apply to the Oklahoma Department of Commerce by no later than March 31 of the year that immediately follows the calendar year for which the incentive payment is to be claimed. 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. In order to qualify for an incentive payment, the applicant shall be required to:

1. Be engaged in a basic industry;

2. Make at least seventy-five percent (75%) of its sales in the calendar year for which the incentive payment is to be claimed 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;

3. Provide for the individuals it employs in new direct jobs in this state a basic health benefit plan which meets the requirements established under the Oklahoma Quality Jobs Program Act in subparagraph b of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes;

4. Pay to at least eighty percent (80%) of the individuals it employs in new direct jobs an annual wage which equals or exceeds one hundred fifty percent (150%) of the per capita personal income, as 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; and

5. 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.

D. The Incentive Approval Committee, created pursuant to subsection B of Section 3603 of Title 68 of the Oklahoma Statutes, and as augmented pursuant to the provisions of subsection C of such section where appropriate, shall determine, upon initial application on a form approved by the Committee, if a business is engaged in a basic industry.

E. 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 Oklahoma Tax Commission and shall provide it with a copy of the application. The Tax Commission may require the qualified business to submit additional information as may be necessary to administer the provisions of this act. The approved business shall report to the Tax Commission annually to show its continued eligibility for incentive payments, as provided in Section 5 of this act. Businesses may be audited by the Tax Commission to verify such eligibility. Once the business is approved, an agreement shall be deemed to exist between the business 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 2357.65 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Upon notification of approval by the Oklahoma Department of Commerce, the business shall file a claim for the incentive payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the business for the calendar year for which the incentive payment is claimed. The Tax Commission shall verify the actual gross payroll for new direct jobs for the business for such calendar year. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request additional information from the business as may be necessary or may request the business to revise its claim.

2. For calendar years beginning after December 31, 1997, the Oklahoma Tax Commission shall issue a warrant to a business approved

pursuant to Section 4 of this act in an amount which shall be equal to five percent (5%) of gross payroll of new direct jobs actually paid for the calendar year for which the incentive payment is claimed.

B. The incentive payment provided for in subsection A of this section shall be allowed in each of the four (4) subsequent calendar years if the following conditions are met and shall be determined each year in accordance with the procedures set out in subsection A of this section:

1. The number of new direct jobs in the subsequent year continues to be greater than the number of jobs that existed in the calendar year prior to the calendar year for which the incentive payment is initially claimed;

2. The wages paid for the new direct jobs continue to equal or exceed one hundred fifty percent (150%) of the per capita personal income for the county in which the new direct jobs are located as such figure was certified by the Oklahoma Department of Commerce for the initial calendar year for which the incentive payment was granted; and

3. The business continues to meet the qualifications specified in subsection C of Section 4 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.66 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 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 estimated by the Commission to be sufficient to pay incentive payments claimed pursuant to the provision 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 2357.67 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 2357.68 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 business. 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 2357.69 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified business receives an incentive payment pursuant to the provisions of this act, neither the qualified business 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 2357.70 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.

46-1-7207

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