

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2245

By: Benson, Askins,
Deutschendorf, Glover,
Kirby, McCarter, Tyler,
Greenwood, Pettigrew, Webb
and Nance of the House

and

Helton and Maddox of the
Senate

COMMITTEE SUBSTITUTE

[economic development - Oklahoma Quality Jobs
Incentive Leverage Act - effective date -

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 3651 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 "Oklahoma
Quality Jobs Incentive Leverage Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3652 of Title 68, unless there
is created a duplication in numbering, reads as follows:

The Legislature finds that certain establishments which qualify
for incentive payments pursuant to the Oklahoma Quality Jobs Program
Act are a source of economic benefits for the state, its political
subdivisions and its residents that can only be achieved through the
use of specialized economic incentives. The Oklahoma Quality Jobs
Incentive Leverage Act is enacted in order to provide a mechanism
for the leverage of incentive payments for the purpose of promoting

and sustaining economic growth and activity within the State of Oklahoma. The Legislature finds that the use of the incentive payment leverage multiplier is a method that provides a beneficial correlation between the use of monies in the Quality Jobs Incentive Leverage Fund and the total economic benefits to be derived from the use of proceeds from the sale of obligations provided by Section 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3653 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Establishment" means a business or an agency of the federal government that:

- a. has at least One Hundred Twenty-five Million Dollars (\$125,000,000.00) in existing annual gross compensation paid to jobs located in Oklahoma according to Oklahoma Employment Security records and company reports for the previous three (3) years,
- b. has an average salary of at least Forty Thousand Dollars (\$40,000.00) paid to existing employees,
- c. intends to add substantial gross compensation, as defined below, with respect to full-time-equivalent employment located in Oklahoma within three (3) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section 7 of this act,
- d. has at least Two Hundred Million Dollars (\$200,000,000.00) total investment in Oklahoma,
- e. intends to add investment for modernization and retooling of at least Fifty Million Dollars (\$50,000,000.00) within five (5) years of filing an irrevocable election with the Oklahoma Department of

Commerce pursuant to the provisions of subsection A of Section 7 of this act or Two Hundred Fifty Million Dollars (\$250,000,000.00) during the term of the contract entered into pursuant to the Oklahoma Quality Jobs Program Act, whichever is less,

- f. has and maintains at least one thousand seven hundred (1,700) full-time employees,
- g. is a qualified industry as defined in Section 2357.4 of Title 68 of the Oklahoma Statutes, and
- h. is described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification Manual (SIC), latest revision;

3. "Gross compensation" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, and benefits paid on behalf of employees receiving wages;

4. "Incentive payment leverage multiplier" means the figure derived by dividing the incentive payment amount by the dollar amount certified by the Oklahoma Development Finance Authority as provided in subsection E of Section 7 of this act;

5. "Substantial gross compensation" means annualized compensation of Four Million Dollars (\$4,000,000.00) or more within three (3) years of contracting with the Oklahoma Department of Commerce under the terms of the Oklahoma Quality Jobs Program Act; and

6. "Tax credit" means a credit allowed prior to the effective date of this act to an establishment, as defined in paragraph 1 of this section, pursuant to the provisions of Section 2357.4 of Title 68 of the Oklahoma Statutes for investment in qualified depreciable property or a net increase in the number of full-time-equivalent employees, to the extent not used prior to the effective date of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3654 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Development Finance Authority shall, according to the requirements of the Oklahoma Development Finance Authority Act, issue obligations in a principal amount not to exceed Forty Million Dollars (\$40,000,000.00) upon certification by the Oklahoma Department of Commerce that an establishment has filed the irrevocable elections described in subsection A of Section 7 of this act. The proceeds of such issuance shall be used by the Authority for the acquisition or improvement of real property or the acquisition or replacement of personal property for the benefit of an establishment making an irrevocable election pursuant to the requirements of this act. Prior to issuance of such obligations, the Oklahoma Development Finance Authority shall file an application with the Supreme Court of Oklahoma pursuant to Section 14.1 of Title 20 of the Oklahoma Statutes for approval of the issuance of such obligations. No obligation may be issued pursuant to the provisions of this section until such approval is obtained.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3655 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Development Finance Authority may use the Credit Enhancement Reserve Fund in order to obtain favorable financing terms for the issuance of obligations authorized by Section 4 of this act. The commitment from the Credit Enhancement Reserve Fund for any such obligations shall not exceed _____ Dollars (\$0.00).

B. For purposes of the issuance authorized by Section 4 of this act, the provisions of Section 5063.4c of Title 74 of the Oklahoma Statutes shall not be applicable.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3656 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 "Quality Jobs Program Incentive Leverage Fund". All amounts deposited into the fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Quality Jobs Incentive Leverage Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3657 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment, as defined in Section 3 of this act, which is otherwise authorized to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act shall:

1. File an irrevocable election with the Oklahoma Department of Commerce to have such incentive payments which would otherwise be paid to the establishment transferred to the Oklahoma Quality Jobs Incentive Leverage Fund; and

2. File an irrevocable election with the Oklahoma Tax Commission to transfer all tax credits, as defined in paragraph 6 of Section 3 of this act, to a corporation:

- a. organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act,
- b. that holds a valid exemption from federal income taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a),
- c. that is listed as an exempt organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), and
- d. that issues indebtedness for the purpose of providing funds for the benefit of and on behalf of Oklahoma

educational institutions, towns, cities and counties and their citizens throughout the state on a tax-exempt basis.

B. Upon filing such elections, any incentive payments which would have been paid to the establishment pursuant to the Oklahoma Quality Jobs Program Act after such filing shall be deposited to the Oklahoma Quality Jobs Incentive Leverage Fund. Such incentive payments shall be treated as an asset of the establishment which has been paid to the State of Oklahoma for purposes of this act.

C. A corporation to which tax credits are transferred pursuant to the provisions of this section may transfer such tax credits to subsequent transferees. The amount of such tax credits that may be transferred by the corporation to subsequent transferees in a single year shall not exceed twenty percent (20%) of the total amount of tax credits transferred to the corporation by the establishment. The corporation and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring corporation and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit.

D. Monies transferred to the Oklahoma Quality Jobs Incentive Leverage Fund shall be used for the payment of principal and interest or other costs associated with the issuance of obligations by the Oklahoma Development Finance Authority pursuant to the provisions of Section 4 of this act. Not later than January 1 and

July 1 of each year, the Oklahoma Development Finance Authority shall certify to the Oklahoma Department of Commerce and the Oklahoma Tax Commission the amount which will be required for payment of principal, interest and other costs associated with the issuance of such obligations for the succeeding six-month period.

E. Upon certification by the Oklahoma Development Finance Authority pursuant to the provisions of subsection D of this section, the amount so certified shall be divided by the amount of incentive payments deposited to the Oklahoma Quality Jobs Incentive Leverage Fund in the preceding six-month period. The resulting quotient shall be known as the incentive payment leverage multiplier. Notwithstanding any provision of law to the contrary, once an irrevocable election has been made by the establishment pursuant to the provisions of this section:

1. The incentive payment made pursuant to the Oklahoma Quality Jobs Program Act for the establishment shall never be less than One Dollar (\$1.00); and

2. Incentive payments shall continue to be paid for the establishment until the Oklahoma Development Finance Authority certifies to the Oklahoma Department of Commerce and the Tax Commission that the indebtedness of the Authority issued pursuant to the provisions of Section 4 of this act has been repaid.

F. As often as may be necessary for the Oklahoma Development Finance Authority to make payments with respect to indebtedness issued pursuant to the provisions of this act, the Tax Commission shall transfer from the revenues specified in Section 9 of this act an amount required to equal the difference between the incentive payment deposit and the amount certified pursuant to the provisions of subsection D of this section. The Tax Commission shall then transfer the total amount required pursuant to the certification to the Oklahoma Development Finance Authority.

G. An establishment to which proceeds from the sale of any obligations issued by the Oklahoma Development Finance Authority are made available as provided by this act shall not claim any tax credits that would otherwise be authorized pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes as a result of jobs created or capital investment made as a direct result of the use of such proceeds. The provisions of this subsection shall not operate to prohibit or limit the transfer of tax credits allowed prior to the effective date of this act as provided in paragraph 2 of subsection A of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3658 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Development Finance Authority is hereby specifically authorized to use the monies transferred from the Oklahoma Quality Jobs Incentive Leverage Fund for the payment of principal, interest and other costs associated with the issuance of obligations pursuant to the provisions of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3659 of Title 68, unless there is created a duplication in numbering, reads as follows:

There shall be apportioned to the Oklahoma Quality Jobs Incentive Leverage Fund from _____ an amount equal to the difference between the incentive payment deposit and the amount certified pursuant to the provisions of subsection D of Section 7 of this act. The apportionment required by this section shall cease when the amount held in the fund is equal to the product of the amount of incentive payments held in the fund and the incentive payment leverage multiplier.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3660 of Title 68, unless there is created a duplication in numbering, reads as follows:

An establishment making the irrevocable elections pursuant to the provisions of Section 7 of this act and which ceases to qualify for an incentive payment pursuant to the provisions of the Oklahoma Quality Jobs Program Act, other than a payment in the amount of One Dollar (\$1.00) as provided in paragraph 1 of subsection E of Section 7 of this act, because of a reduction in gross payroll at a facility constructed with or equipped with personal property acquired through the use of proceeds from the issuance of obligations by the Oklahoma Development Finance Authority pursuant to the provisions of this act, shall be liable to the State of Oklahoma and the Oklahoma Development Finance Authority for the amount of principal, interest and other costs associated with the issuance of such obligations until such time as such obligations are fully repaid.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 2357.4, is amended to read as follows:

Section 2357.4 A. ~~For~~ Except as otherwise provided in the Oklahoma Quality Jobs Incentive Leverage Act, for taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state; or

2. A net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. ~~For~~ Except as otherwise provided in the Oklahoma Quality Jobs Incentive Leverage Act, for taxable years beginning after

December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property with a total cost equal to or greater than Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure and placed in service in this state during those years for use in the manufacture of products described by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision; or

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Oklahoma Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section, but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00). The credit provided for in subsection A or B of this section shall not be allowed if the applicable investment is the direct cause of a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A or B of this section is calculated on the basis of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in

the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

G. The credit allowed by subsection A of this section shall be the greater amount of either:

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

H. The credit allowed by subsection B of this section shall be the greater amount of either:

1. Two percent (2%) of the cost of the qualified property in the year the property is placed in service; or

2. One Thousand Dollars (\$1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the

year of qualification and to the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period.

SECTION 12. AMENDATORY 74 O.S. 2001, Section 5063.4c, is amended to read as follows:

Section 5063.4c ~~At~~ Except as otherwise provided in Section 5 of this act, at the time of loan origination, the Oklahoma Development Finance Authority shall require such security from the applicant as it deems necessary in the circumstances of the insurance commitment. Except for the infrastructure and other publicly owned facilities of governmental entities and Quality Jobs Investment Program portfolio mix categories, such security will include, but not be limited to:

1. A first mortgage or coordinate first mortgage on real property, facilities or systems and fixtures located thereon; or
2. A second mortgage on real property, facilities or systems and fixtures located thereon, provided the amount thereof may not exceed One Million Dollars (\$1,000,000.00).

SECTION 13. This act shall become effective July 1, 2002.

SECTION 14. 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.

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