

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 828

By: Fisher

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 3903, 3904 and 3905, which relate to the Small Employer Quality Jobs Incentive Act; modifying definitions and defining terms; modifying period of time for which incentive payments may be received under the Small Employer Quality Jobs Incentive Act; modifying amounts and frequency of receipt of such payments; modifying minimum employment requirements and other qualifications; deleting obsolete language; providing that certain establishments continue to receive payments under certain conditions; modifying time during which certain reports required to be filed with Oklahoma Tax Commission; modifying certain duties of Oklahoma Tax Commission and Oklahoma Department of Commerce; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3903, is amended to read as follows:

Section 3903. As used in ~~this act~~ the Small Employer Quality Jobs Incentive 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~~ this title. Provided, for the purposes of ~~this act~~ the Small Employer Quality Jobs Incentive Act, the determination required by subdivision (b) or division (7) or division (8) ~~(9)~~ of subparagraph a of paragraph 1 of subsection A of Section 3603 of ~~Title 68 of the Oklahoma Statutes~~ this title 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 located in a county with a population of not more than sixty thousand (60,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data;

3. "Estimated direct state benefits" means the tax revenues projected by the Oklahoma Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department to accrue to the state as a result of new direct jobs. Such costs shall include, but not be limited to:

- a. the costs of education of new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "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.~~ 7. "Gross taxable payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes this title, for new direct jobs; and

~~5.~~ 8. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. the net benefit rate may be variable and shall not exceed five percent (5%), and

b. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits; and

9. "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~~ the Small Employer Quality Jobs Incentive 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 2. AMENDATORY 68 O.S. 2001, Section 3904, is amended to read as follows:

Section 3904. A. An establishment which meets the qualifications specified in the Small Employer Quality Jobs Incentive Act may receive ~~annual~~ quarterly incentive payments for a ~~five-year~~ seven-year period from the Oklahoma Tax Commission pursuant to the provisions of the Small Employer Quality Jobs Incentive Act in an amount equal to ~~five percent (5%)~~ the net benefit rate multiplied by the actual gross taxable 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 as follows:

- a. if the establishment is located in a municipality with a population less than three thousand five hundred (3,500) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, five new direct jobs,
- b. if the establishment is located in a municipality with a population of three thousand five hundred (3,500) persons or more but less than seven thousand (7,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, ten new direct jobs, and
- c. if the establishment is located in a municipality with a population of seven thousand (7,000) persons or more, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, fifteen new direct jobs;

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 average annualized wage which equals or exceeds ~~one hundred fifty percent (150%):~~

- a. one hundred twenty-five percent (125%) of the ~~per capita personal income~~ average county wage 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 the Small Employer Quality Jobs Incentive Act~~ this subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall be included in the annualized wage, or
- b. one hundred ten percent (110%) of the average county wage as that percentage is determined by the Oklahoma State Data Center based upon the most recent U.S. Department of Commerce data for the county in which the new direct jobs are located. For purposes of this subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall not 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 this title and which will be offered to individuals within ~~ninety (90) days~~ twelve (12) months of employment in a new direct job;

7. Has not received 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, the Saving Quality Jobs Act, or the Former Military Facility Development 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 number of persons employed by the applicant upon the date of approval and the maximum total incentives which may be paid to the applicant during the ~~five-year~~ seven-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the provisions of the Small Employer Quality Jobs Incentive Act. The approved establishment shall report to the Tax Commission ~~annually~~ quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of this title. ~~Provided, any establishment which has been approved for incentive payments prior to the effective date of this act shall begin reporting annually on a date set for the establishment by the Department.~~ 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~~ seven-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. Any establishment which has been approved for incentive payments prior to July 1, 2002, shall continue to receive such payments pursuant to the laws as they

existed prior to July 1, 2002, for any period of time of the original five-year period for such payments remaining after July 1, 2002.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3905, is amended to read as follows:

Section 3905. A. 1. Beginning ~~twelve (12) months~~ with the first complete calendar quarter after the application of the establishment is approved by the Oklahoma Department of Commerce, the establishment shall begin filing ~~annual~~ quarterly reports with the Oklahoma Tax Commission that specify the actual number and individual gross taxable payroll of new direct jobs for the establishment and such other information as required by the Tax Commission. The Tax Commission shall verify the actual individual gross taxable 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~~ seven-year incentive period or until it is no longer qualified to receive incentive payments. Such reports shall constitute a claim for ~~annual~~ quarterly incentive payments by the establishment.

2. Upon receipt of a report for the initial ~~twelve (12) months~~ calendar quarter of the incentive period and for each subsequent ~~twelve-month period~~ calendar quarter thereafter, the Tax Commission shall determine if the establishment has met the following requirements:

- a. created and or maintained ~~a~~ the minimum number of ~~ten~~ new direct jobs as specified in paragraph 3 of subsection C of Section 3904 of this title, 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%) the applicable percentage of the ~~per capita~~~~
~~personal income average county wage 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 (12) months~~ calendar quarter of the incentive period, the Tax
Commission shall issue a warrant to the establishment in an amount
which shall be equal to ~~five percent (5%)~~ the net benefit rate
multiplied by the amount of gross taxable payroll of new direct jobs
actually paid by the establishment.

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

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~~ twenty-
seven subsequent ~~twelve-month periods~~ calendar quarters does not
meet the requirements of paragraph 2 of subsection A of this section
shall be ineligible to receive an incentive payment during the
~~twelve-month period~~ calendar quarter in which such requirements are
not met.

SECTION 4. This act shall become effective July 1, 2002.

SECTION 5. 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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