

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 828

By: Fisher, Capps, Shurden,
Herbert and Henry of the
Senate

and

Roggow, Adair, Askins,
Balkman, Begley, Bonny,
Coleman, Covey, Dank,
Greenwood, Lindley, Rice,
Roach, Walker and Webb of
the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 3603, 3903, 3904 and 3905, which relate to the Oklahoma Quality Jobs Program Act and the Small Employer Quality Jobs Incentive Act; modifying definitions; modifying duties of Incentive Approval Committee; 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 3603, is amended to read as follows:

Section 3603. A. As used in Section 3601 et seq. of this title:

1. a. "Basic industry" means:

- (1) those manufacturing activities defined or classified in the NAICS Manual under Industry

Sector Nos. 31, 32 and 33, Industry Group No. 5111 or Industry No. 11331,

(2) those electric power generation, transmission and distribution activities defined or classified in the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:

(a) an establishment engaged therein qualifies as an exempt wholesale generator as defined by 15 U.S.C., Section 79z-5a,

(b) the exempt wholesale generator facility consumes from sources located within the state at least ninety percent (90%) of the total energy used to produce the electrical output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto,

(c) the exempt wholesale generator facility sells to purchasers located outside the state for consumption in activities located outside the state at least ninety percent (90%) of the total electrical energy output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto, and

(d) the facility is constructed on or after July 1, 1996,

(3) those administrative and facilities support service activities defined or classified in the

- NAICS Manual under Industry Group Nos. 5611 and 5612, Industry Nos. 51421, 52232, 56142 and 54191 or U.S. Industry No. 524291,
- (4) those professional, scientific and technical service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541710 and 541380,
 - (5) warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state,
 - (6) those adjustment and collection service activities defined or classified in the NAICS Manual under U.S. Industry No. 561440, if seventy-five percent (75%) of the loans to be serviced were made by out-of-state debtors,
 - (7) (a) those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if the following facilities are located in this state:
 - (i) the corporate headquarters of an establishment classified therein, and
 - (ii) a facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the

performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services, or

(b) those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if an establishment classified therein has or will have within one (1) year sales of 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 this section, 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, ~~or~~

(8) ~~The~~ the following, if an establishment classified therein has or will have within one (1) year sales of 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 this section, 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:

(a) those transportation and warehousing activities defined or classified in the NAICS Manual under Industry Subsector No.

- 493, if not otherwise listed in this paragraph, Industry Subsector No. 484 and Industry Group Nos. 4884 through 4889,
- (b) those passenger transportation activities defined or classified in the NAICS Manual under Industry Nos. 561510, 561520 and 561599,
 - (c) those freight or cargo transportation activities defined or classified in the NAICS Manual under Industry No. 541614,
 - (d) those insurance activities defined or classified in the NAICS Manual under Industry Group No. 5241,
 - (e) those mailing, reproduction, commercial art and photography and stenographic service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541430, 541860, 541922, 561439 and 561492,
 - (f) those services to dwellings and other buildings, as defined or classified in the NAICS Manual under Industry Group No. 5617, excluding U.S. Industry No. 561730,
 - (g) those equipment rental and leasing activities defined or classified in the NAICS Manual under Industry Group Nos. 5323 and 5324,
 - (h) those employment services defined or classified in the NAICS Manual under Industry Group No. 5613,
 - (i) those information technology and other computer-related service activities defined or classified in the NAICS Manual under

- Industry Group Nos. 5112, 5141, 5142 and 5415,
- (j) those business support service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 561410 through 561439, Industry Group No. 5616 and Industry No. 51411,
 - (k) those medical and dental laboratory activities defined or classified in the NAICS Manual under U.S. Industry No. 621511,
 - (l) those professional, scientific and technical service activities defined or classified in the NAICS Manual under Industry Group Nos. 5412, 5414, 5415, 5416 and 5417 and Industry Nos. 54131, 54133, 54136, 54137, 54138 and 54182, if not otherwise listed in this paragraph,
 - (m) those communication service activities defined or classified in the NAICS Manual under Industry Nos. 51334 and 51339,
 - (n) those refuse systems activities defined or classified in the NAICS Manual under Industry Group No. 5622, provided that the establishment is primarily engaged in the capture and distribution of methane gas produced within a landfill,
 - (o) general wholesale distribution of groceries, defined or classified in the NAICS Manual under Industry Group Nos. 4224 and 4225, and
 - (p) those ~~insurance-related~~ activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S.

Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and 524292 in the NAICS Manual other than processing of insurance claims shall not be included for purposes of this subdivision, or

(9) those activities related to extraction of crude petroleum and natural gas defined or classified in the NAICS Manual under Industry Group No. 2111, subject to the limitations provided in paragraph 2 of this subsection and paragraph 3 of subsection B of this section.

b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of Section 3601 et seq. of this title, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

- (1) not less than fifty percent (50%) of the premium shall be paid by the employer,
- (2) coverage for basic hospital care,
- (3) coverage for physician care,
- (4) coverage for mental health care,
- (5) coverage for substance abuse treatment,
- (6) coverage for prescription drugs, and
- (7) coverage for prenatal care;

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title. "New direct job" shall include full-time-equivalent employment in this state of employees who are employed by an entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided to the qualified establishment, if such employment did not exist in this state prior to the date of approval by the Department of the application of the establishment. 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 any time within six (6) months prior to such approval. With respect to establishments defined in division (9) of subparagraph a of paragraph 1 of this subsection, new direct jobs shall be limited to those jobs directly comprising the corporate headquarters of or directly relating to administrative, financial, engineering, surveying, geological or geophysical services performed by the establishment. Under no circumstances shall employment relating to drilling or field services be considered new direct jobs;

3. "Estimated direct state benefits" means the tax revenues projected by the Department 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. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed five percent (5%),
- b. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:
 - (1) bids were solicited and accepted by the United States Department of Defense from facilities located outside this state,
 - (2) the term is or is renewable for not less than twenty (20) years, and
 - (3) the average annual salary, excluding benefits which are not subject to Oklahoma income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the Department of Commerce to equal or exceed Forty Thousand Dollars (\$40,000.00) within three (3) years of the date of the first incentive payment,
- c. except as otherwise provided in subparagraph d of this paragraph, in no event shall incentive payments,

cumulatively, exceed the estimated net direct state benefits, and

d. the net benefit rate shall be five percent (5%) for an establishment locating:

(1) in an opportunity zone located in a high-employment county, as such terms are defined in subsection G of Section 3604 of this title, or

(2) in a county in which:

(a) the per capita personal income, as determined by the Department, is eighty percent (80%) or less of the statewide average per capita personal income,

(b) the population has decreased over the previous ten (10) years, as determined by the State Data Center based on the most recent U.S. Department of Commerce data, or

(c) the unemployment rate exceeds the lesser of five percent (5%) or two percentage points above the state average unemployment rate as certified by the Oklahoma Employment Security Commission;

7. "Gross payroll" means wages, as defined in Section 2385.1 of this title for new direct jobs;

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct,

identifiable subunits of such entities may be determined to be an establishment, for all purposes of Section 3601 et seq. of this title, by the Department subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),
- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Department,
- (4) the entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of subparagraph b of paragraph 6 of this subsection, and
- (5) it is determined by the Department that the entity will have a probable net gain in total employment within the incentive period.

b. The Department may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment;

9. "NAICS Manual" means any manual, book or other publication containing the North American Industry Classification System, United States, 1997, promulgated by the Office of Management and Budget of the United States of America, as such system may be revised from time to time;

10. "SIC Manual" means the 1987 revision to the Standard Industrial Classification Manual, promulgated by the Office of Management and Budget of the United States of America; and

11. "Start date" means the date on which an establishment may begin accruing benefits for the creation of new direct jobs, which date shall be determined by the Department.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, ~~upon:~~

1. Upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subdivision (b) of division (7) or in subdivisions (a) through (p) of division (8) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section. ~~It is the further duty of the Committee to determine if;~~

2. If an establishment would have been defined as a "basic industry" prior to the amendments to this section to convert from SIC Codes to NAICS Codes. If the Committee so determines, the establishment shall be considered as a "basic industry" for purposes of the Oklahoma Quality Jobs Program Act; and

3. If employees of an establishment as defined in division (9) of subparagraph a of paragraph 1 of subsection A of this section meet the requirements to be considered employed in new direct jobs as specified in paragraph 2 of subsection A of this section.

C. For an establishment defined as a "basic industry" pursuant to division (4) of subparagraph a of paragraph 1 of subsection A of this section, the Incentive Approval Committee shall consist of the members provided by subsection B of this section and the President of the Oklahoma Center for the Advancement of Science and Technology.

SECTION 2. 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 divisions (1) through (8) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes this title, excluding those activities described in division (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of 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 (9) (8) 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 two hundred thousand (200,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data or located in an "opportunity zone" as such term is defined in paragraph 2 of subsection G of Section 3604 of this title;

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 3. 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 4. 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 5. This act shall become effective July 1, 2002.

SECTION 6. 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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