

CS for SB 407

THE STATE SENATE
Monday, February 21, 2005

Committee Substitute for
Senate Bill No. 407

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 407 - By: MAZZEI and GUMM
of the Senate and YOUNG of the House.

[revenue and taxation - Small Employer Quality Jobs
Incentive Act - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3903, as
last amended by Section 3, Chapter 377, O.S.L. 2003 (68 O.S. Supp.
2004, Section 3903), is amended to read as follows:

Section 3903. As used in 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
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 the Small Employer
Quality Jobs Incentive Act, the determination required by
subdivision (b) of division (7) or division (8) of subparagraph a of
paragraph 1 of subsection A of Section 3603 of this title shall be

1 made by the Oklahoma Department of Commerce and not the Incentive
2 Approval Committee;

3 2. "Establishment" means any business, no matter what legal
4 form, including, but not limited to, a sole proprietorship,
5 partnership, corporation, or limited liability corporation located
6 in a county with a population of not more than two hundred thousand
7 (200,000) persons, as determined by the Oklahoma State Data Center
8 based on the most recent U.S. Department of Commerce data or located
9 in an "opportunity zone" ~~unless such establishment is in the NAIC~~
10 ~~Manual under the U.S. Industry Number 541710 or 541380, in which~~
11 ~~case these physical, engineering, and life sciences and testing~~
12 ~~laboratories for such physical, engineering and life sciences may be~~
13 ~~located anywhere within the state; provided, a business classified~~
14 as research and development in the physical, engineering and life
15 sciences as described under U.S. Industry Number 541710 or
16 classified as a testing laboratory as described under U.S. Industry
17 Number 541380 in the North American Industry Classification System
18 (NAICS) Manual shall be considered to be an establishment for
19 purposes of the Small Employer Quality Jobs Incentive Act regardless
20 of the population of the county in which the establishment is
21 located. As used in this paragraph, "opportunity zone" means one or
22 more census tracts in which, according to the most recent Federal
23 Decennial Census, at least thirty percent (30%) of the residents

1 have annual gross household incomes from all sources below the
2 poverty guidelines established by the U.S. Department of Health and
3 Human Services;

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

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

10 a. the costs of education of new state resident children,

11 b. the costs of public health, public safety and
12 transportation services to be provided to new state
13 residents,

14 c. the costs of other state services to be provided to
15 new state residents, and

16 d. the costs of other state services;

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

19 6. "Full-time employment" means employment for twenty-five (25)
20 hours per week or more, which has a minimum six-month duration
21 during any twelve-month period;

22 7. "Gross taxable payroll" means wages, as defined in Section
23 2385.1 of this title, for new direct jobs;

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

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

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

7 9. "New direct job" means full-time employment which did not
8 exist in this state prior to the date of approval, by the Oklahoma
9 Department of Commerce, of an application made pursuant to the Small
10 Employer Quality Jobs Incentive Act. A job shall be deemed to exist
11 in this state prior to approval of an application if the activities
12 and functions for which the particular job exists have been ongoing
13 at anytime within six (6) months prior to such approval.

14 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3904, as
15 last amended by Section 4, Chapter 457, O.S.L. 2004 (68 O.S. Supp.
16 2004, Section 3904), is amended to read as follows:

17 Section 3904. A. An establishment which meets the
18 qualifications specified in the Small Employer Quality Jobs
19 Incentive Act may receive quarterly incentive payments for a seven-
20 year period from the Oklahoma Tax Commission pursuant to the
21 provisions of the Small Employer Quality Jobs Incentive Act in an
22 amount equal to the net benefit rate multiplied by the actual gross

1 taxable payroll of new direct jobs as verified by the Tax
2 Commission.

3 B. In order to receive incentive payments, an establishment
4 shall apply to the Oklahoma Department of Commerce. The application
5 shall be on a form prescribed by the Department and shall contain
6 such information as may be required by the Department to determine
7 if the applicant is qualified. The establishment may apply for
8 payments to begin on a date certain specified in the application,
9 which shall not be more than twenty-four (24) months from the date
10 the application is submitted to the Department.

11 C. Before approving an application for incentive payments, the
12 Department must first determine that the applicant meets the
13 following requirements:

- 14 1. Be engaged in a basic industry;
- 15 2. Has no more than ninety full-time employees in this state on
16 the date of application nor an average of more than ninety full-time
17 employees in this state during the four calendar quarters
18 immediately preceding the date of application;
- 19 3. Has a projected minimum employment, as determined by the
20 Department, of new direct jobs within twelve (12) months of the date
21 of application as follows:
 - 22 a. if the establishment is located in a municipality with
23 a population less than three thousand five hundred

1 (3,500) persons, as determined by the Oklahoma State
2 Data Center based on the most recent U.S. Department
3 of Commerce data, or if the establishment is located
4 in an unincorporated area and the largest municipality
5 within twenty (20) miles of the establishment is such
6 a municipality, five new direct jobs,
7 b. if the establishment is located in a municipality with
8 a population of three thousand five hundred (3,500)
9 persons or more but less than seven thousand (7,000)
10 persons, as determined by the Oklahoma State Data
11 Center based on the most recent U.S. Department of
12 Commerce data, or if the establishment is located in
13 an unincorporated area and the largest municipality
14 within twenty (20) miles of the establishment is such
15 a municipality, ten new direct jobs, and
16 c. if the establishment is located in a municipality with
17 a population of seven thousand (7,000) persons or
18 more, as determined by the Oklahoma State Data Center
19 based on the most recent U.S. Department of Commerce
20 data, or if the establishment is located in an
21 unincorporated area and the largest municipality
22 within twenty (20) miles of the establishment is such
23 a municipality, fifteen new direct jobs.

1 Provided, for an establishment engaged in software publishing as
2 defined or classified in the NAICS Manual under Industry Group No.
3 5112, data processing, hosting and related services as defined or
4 classified in the NAICS Manual under Industry Group No. 5182,
5 computer systems design and related services as defined or
6 classified in the NAICS Manual under Industry Group No. 5415,
7 scientific research and development services as defined or
8 classified in the NAICS Manual under Industry Group No. 5417,
9 medical and diagnostic laboratories as defined or classified in the
10 NAICS Manual under Industry Group No. 6215 or testing laboratories
11 as defined or classified in the NAICS Manual under U.S. Industry No.
12 541380, the projected minimum employment requirements of this
13 paragraph must be achieved within thirty-six (36) months of the date
14 of application;

15 4. Has or will have within ~~three (3)~~ twelve (12) months of the
16 date of application, as determined by the Department, sales of at
17 least seventy-five percent (75%) of its total sales to out-of-state
18 customers or buyers, to in-state customers or buyers if the product
19 or service is resold by the purchaser to an out-of-state customer or
20 buyer for ultimate use, or to the federal government, except that:

21 a. those establishments in the NAICS Manual under the
22 U.S. Industry No. 541710 or 541380 are excused from

1 the seventy-five percent (75%) out-of-state sales
2 requirement,
3 b. warehouses that serve as distribution centers for
4 retail or wholesale businesses shall be required to
5 distribute forty percent (40%) of inventory to out-of-
6 state locations, and
7 c. adjustment and collection services activities defined
8 or classified in the NAICS Manual under U.S. Industry
9 No. 561440 shall be required to have seventy-five
10 percent (75%) of loans to be serviced made by out-of-
11 state debtors;

12 5. Will pay the individuals it employs in new direct jobs an
13 average annualized wage which equals or exceeds:

14 a. one hundred twenty-five percent (125%) of the average
15 county wage as that percentage is determined by the
16 Oklahoma State Data Center based on the most recent
17 U.S. Department of Commerce data for the county in
18 which the new direct jobs are located. For purposes
19 of this subparagraph, health care premiums paid by the
20 applicant for individuals in new direct jobs shall be
21 included in the annualized wage, or
22 b. one hundred ten percent (110%) of the average county
23 wage as that percentage is determined by the Oklahoma

1 State Data Center based upon the most recent U.S.
2 Department of Commerce data for the county in which
3 the new direct jobs are located. For purposes of this
4 subparagraph, health care premiums paid by the
5 applicant for individuals in new direct jobs shall not
6 be included in the annualized wage;

7 6. Has a basic health benefit plan which, as determined by the
8 Department, meets the elements established under divisions (1)
9 through (7) of subparagraph b of paragraph 1 of subsection A of
10 Section 3603 of this title and which will be offered to individuals
11 within twelve (12) months of employment in a new direct job;

12 7. Has not received incentive payments under the Oklahoma
13 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former
14 Military Facility Development Act; and

15 8. Is not qualified for approval of an application for
16 incentive payments under the Oklahoma Quality Jobs Program Act, the
17 Saving Quality Jobs Act, or the Former Military Facility Development
18 Act.

19 D. The Oklahoma Department of Commerce shall determine if an
20 applicant is qualified to receive the incentive payment. Upon
21 qualifying the applicant, the Department shall notify the Tax
22 Commission and shall provide it with a copy of the application, and
23 approval which shall provide the number of persons employed by the

1 applicant upon the date of approval and the maximum total incentives
2 which may be paid to the applicant during the seven-year period.
3 The Tax Commission may require the qualified establishment to submit
4 additional information as may be necessary to administer the
5 provisions of the Small Employer Quality Jobs Incentive Act. The
6 approved establishment shall report to the Tax Commission quarterly
7 to show its continued eligibility for incentive payments, as
8 provided in Section 3905 of this title. Establishments may be
9 audited by the Tax Commission to verify such eligibility. Once the
10 establishment is approved, an agreement shall be deemed to exist
11 between the establishment and the State of Oklahoma, requiring
12 incentive payments to be made for a seven-year period as long as the
13 establishment retains its eligibility and within the limitations of
14 the Small Employer Quality Jobs Incentive Act which existed at the
15 time of such approval. Any establishment which has been approved
16 for incentive payments prior to July 1, 2002, shall continue to
17 receive such payments pursuant to the laws as they existed prior to
18 July 1, 2002, for any period of time of the original five-year
19 period for such payments remaining after July 1, 2002.

20 SECTION 3. This act shall become effective November 1, 2005.

21 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-15-05 - DO PASS,
22 As Amended and Coauthored.