

THE HOUSE OF REPRESENTATIVES
Thursday, April 12, 2007

ENGROSSED
Senate Bill No. 871
As Amended

ENGROSSED SENATE BILL NO. 871 - By: GUMM of the Senate and PETERSON (RON) of the House.

[revenue and taxation - modifying provisions relating to Oklahoma Quality Jobs Program Act and Small Employer Quality Jobs Incentive Act - effective date -
emergency]

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3604, as last amended by
2 Section 63 of Enrolled House Bill No. 2195 of the 1st Session of the 51st Oklahoma
3 Legislature, is amended to read as follows:
4 Section 3604. A. Except as otherwise provided in subsection I of this section, an
5 establishment which meets the qualifications specified in the Oklahoma Quality Jobs
6 Program Act may receive quarterly incentive payments for a ten-year period from the
7 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs
8 Program Act in an amount which shall be equal to the net benefit rate multiplied by the
9 actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma
10 Employment Security Commission.

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

7 C. Except as otherwise provided by subsection D or E of this section, in order to
8 qualify to receive such payments, the establishment applying shall be required to:

9 1. Be engaged in a basic industry;

10 2. Have an annual gross payroll for new direct jobs projected by the Department to
11 equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within
12 three (3) years of the start date; and

13 3. Have a number of full-time-equivalent employees residing in this state and
14 working an annual average of thirty (30) or more hours per week in new direct jobs equal
15 to or in excess of eighty percent (80%) of the total number of new direct jobs.

16 D. In order to qualify to receive incentive payments as authorized by the Oklahoma
17 Quality Jobs Program Act, an establishment engaged in an activity described under:

18 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual shall be required
19 to:

20 a. have an annual gross payroll for new direct jobs projected by the
21 Department to equal or exceed One Million Five Hundred Thousand
22 Dollars (\$1,500,000.00) within three (3) years of the start date and

1 make, or which will make within one (1) year, at least seventy-five
2 percent (75%) of its total sales, as determined by the Incentive
3 Approval Committee pursuant to the provisions of subsection B of
4 Section 3603 of this title, to out-of-state customers or buyers, to in-
5 state customers or buyers if the product or service is resold by the
6 purchaser to an out-of-state customer or buyer for ultimate use, or to
7 the federal government, unless the annual gross payroll equals or
8 exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
9 in which case the requirements for purchase of output provided by this
10 subparagraph shall not apply, and

11 b. have a number of full-time-equivalent employees working an average
12 of twenty-five (25) or more hours per week in new direct jobs equal to
13 or in excess of eighty percent (80%) of the total number of new direct
14 jobs; and

15 2. Division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of
16 this title, shall be required to:

17 a. have an annual gross payroll for new direct jobs projected by the
18 Department to equal or exceed One Million Five Hundred Thousand
19 Dollars (\$1,500,000.00) within three (3) years of the start date, and

20 b. have a number of full-time-equivalent employees working an average
21 of twenty-five (25) or more hours per week in new direct jobs equal to

1 or in excess of eighty percent (80%) of the total number of new direct
2 jobs.

3 E. 1. An establishment which locates its principal business activity within a site
4 consisting of at least ten (10) acres which:

- 5 a. is a federal Superfund removal site,
- 6 b. is listed on the National Priorities List established under Section 9605
7 of Title 42 of the United States Code,
- 8 c. has been formally deferred to the state in lieu of listing on the National
9 Priorities List, or
- 10 d. has been determined by the Department of Environmental Quality to
11 be contaminated by any substance regulated by a federal or state
12 statute governing environmental conditions for real property pursuant
13 to an order of the Department of Environmental Quality,

14 shall qualify for incentive payments irrespective of its actual gross payroll or the number
15 of full-time-equivalent employees engaged in new direct jobs.

16 2. In order to qualify for the incentive payments pursuant to this subsection, the
17 establishment shall conduct the activity resulting in at least fifty percent (50%) of its
18 Oklahoma taxable income or adjusted gross income, as determined under Section 2358 of
19 this title, whether from the sale of products or services or both products and services, at
20 the physical location which has been determined not to comply with the federal or state
21 statutes described in this subsection with respect to environmental conditions for real

1 property. The establishment shall be subject to all other requirements of the Oklahoma
2 Quality Jobs Program Act other than the exemptions provided by this subsection.

3 3. In order to qualify for the incentive payments pursuant to this subsection, the
4 entity shall obtain from the Department of Environmental Quality a letter of concurrence
5 that:

6 a. the site designated by the entity does meet one or more of the
7 requirements listed in paragraph 1 of this subsection, and

8 b. the site is being or has been remediated to a level which is consistent
9 with the intended use of the property.

10 In making its determination, the Department of Environmental Quality may rely on
11 existing data and information available to it, but may also require the applying entity to
12 provide additional data and information as necessary.

13 4. If authorized by the Department of Environmental Quality pursuant to
14 paragraph 3 of this subsection, the entity may utilize a remediated portion of the
15 property for its intended purpose prior to remediation of the remainder of the site, and
16 shall qualify for incentive payments based on employment associated with the portion of
17 the site.

18 F. Except as otherwise provided by subsection G of this section, for applications
19 submitted on and after the effective date of this act, in order to qualify to receive
20 incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in
21 addition to other qualifications specified herein, an establishment shall be required to
22 pay new direct jobs an average annualized wage which equals or exceeds:

1 1. One hundred ten percent (110%) of the average county wage as determined by
2 the Oklahoma State Data Center based on the most recent U.S. Department of
3 Commerce data for the county in which the new direct jobs are located. For purposes of
4 this paragraph, health care premiums paid by the applicant for individuals in new direct
5 jobs shall be included in the annualized wage; or

6 2. One hundred percent (100%) of the average county wage as that percentage is
7 determined by the Oklahoma State Data Center based upon the most recent U.S.
8 Department of Commerce data for the county in which the new jobs are located. For
9 purposes of this paragraph, health care premiums paid by the applicant for individuals
10 in new direct jobs shall not be included in the annualized wage.

11 Provided, no average wage requirement shall exceed Twenty-five Thousand Dollars
12 (\$25,000.00), in any county. This maximum wage threshold shall be indexed and
13 modified from time to time based on the latest Consumer Price Index year-to-date
14 percent change release as of the date of the annual average county wage data release
15 from the Bureau of Economic Analysis of the U.S. Department of Commerce.

16 G. 1. As used in this subsection, “opportunity zone” means one or more census
17 tracts in which, according to the most recent federal decennial census, at least thirty
18 percent (30%) of the residents have annual gross household incomes from all sources
19 below the poverty guidelines established by the U.S. Department of Health and Human
20 Services. An establishment which is otherwise qualified to receive incentive payments
21 and which locates its principal business activity in an opportunity zone shall not be
22 subject to the requirements of subsection F of this section.

1 2. As used in this subsection:

2 a. “negative economic event” means:

3 (1) a man-made disaster or natural disaster as defined in Section
4 683.3 of Title 63 of the Oklahoma Statutes, resulting in the loss
5 of a significant number of jobs within a particular county of this
6 state, or

7 (2) an economic circumstance in which a significant number of jobs
8 within a particular county of this state have been lost due to an
9 establishment changing its structure, consolidating with
10 another establishment, closing or moving all or part of its
11 operations out of this state, and

12 b. “significant number of jobs” means ~~full-time-equivalent employment in~~
13 ~~a county equal to or in excess of three percent (3%) of the total amount~~
14 ~~of full-time-equivalent employment in~~ Local Area Unemployment
15 Statistics (LAUS) data, as determined by the Bureau of Labor
16 Statistics, for a county which are equal to or in excess of five percent
17 (5%) of the total amount of Local Area Unemployment Statistics
18 (LAUS) data for that county for the calendar year, or most recent
19 twelve-month period in which employment is measured, preceding the
20 event.

21 An establishment which is otherwise qualified to receive incentive payments and
22 which locates in a county in which a negative economic event has occurred within the

1 eighteen-month period preceding the start date shall not be subject to the requirements
2 of subsection F of this section; provided, an establishment shall not be eligible to receive
3 incentive payments based upon a negative economic event with respect to jobs that are
4 transferred from one county of this state to another.

5 H. The Department shall determine if the applicant is qualified to receive incentive
6 payments.

7 I. If the applicant is determined to be qualified by the Department and is not
8 subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section
9 3603 of this title, the Department shall conduct a cost/benefit analysis to determine the
10 estimated net direct state benefits and the net benefit rate applicable for a ten-year
11 period and to estimate the amount of gross payroll for a ten-year period. In conducting
12 such cost/benefit analysis, the Department shall consider quantitative factors, such as
13 the anticipated level of new tax revenues to the state along with the added cost to the
14 state of providing services, and such other criteria as deemed appropriate by the
15 Department. In no event shall incentive payments, cumulatively, exceed the estimated
16 net direct state benefits, except for applicants subject to the provisions of subparagraph d
17 of paragraph 6 of subsection A of Section 3603 of this title.

18 J. Upon approval of such an application, the Department shall notify the Tax
19 Commission and shall provide it with a copy of the application and the results of the
20 cost/benefit analysis. The Tax Commission may require the qualified establishment to
21 submit such additional information as may be necessary to administer the provisions of
22 the Oklahoma Quality Jobs Program Act. The approved establishment shall report to

1 the Tax Commission periodically to show its continued eligibility for incentive payments,
2 as provided in Section 3606 of this title. The establishment may be audited by the Tax
3 Commission to verify such eligibility. Once the establishment is approved, an agreement
4 shall be deemed to exist between the establishment and the State of Oklahoma, requiring
5 the continued incentive payment to be made as long as the establishment retains its
6 eligibility as defined in and established pursuant to this section and Sections 3603 and
7 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs
8 Program Act, which existed at the time of such approval.

9 K. A municipality with a population of less than one hundred thousand (100,000)
10 persons in which an establishment eligible to receive quarterly incentive payments
11 pursuant to the provisions of this section is located may file a claim with the Tax
12 Commission for up to twenty-five percent (25%) of the amount of such payment. The
13 amount of such claim shall not exceed amounts paid by the municipality for direct costs
14 of municipal infrastructure improvements to provide water and sewer service to the
15 establishment. Such claim shall not be approved by the Tax Commission unless the
16 municipality and the establishment have entered into a written agreement for such
17 claims to be filed by the municipality prior to submission of the application of the
18 establishment pursuant to the provisions of this section. If such claim is approved, the
19 amount of the payment to the establishment made pursuant to the provisions of Section
20 3606 of this title shall be reduced by the amount of the approved claim by the
21 municipality and the Tax Commission shall issue a warrant to the municipality in the

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1 amount of the approved claim in the same manner as warrants are issued to qualifying
2 establishments.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3606, as last amended by
4 Section 65 of Enrolled House Bill No. 2195 of the 1st Session of the 51st Oklahoma
5 Legislature, is amended to read as follows:

6 Section 3606. A. As soon as practicable after the end of a calendar quarter for
7 which an establishment has qualified to receive an incentive payment, the establishment
8 shall file a claim for the payment with the Oklahoma Tax Commission and shall specify
9 the actual number and gross payroll of new direct jobs for the establishment for the
10 calendar quarter; provided, in no event shall the first claim for incentive payments be
11 filed later than three (3) years from the start date designated by the Oklahoma
12 Department of Commerce. The Tax Commission shall verify the actual gross payroll for
13 new direct jobs for the establishment for such calendar quarter. If the Tax Commission
14 is not able to provide such verification utilizing all available resources, the Tax
15 Commission may request such additional information from the establishment as may be
16 necessary or may request the establishment to revise its claim.

17 B. If the actual verified gross payroll for four (4) consecutive calendar quarters does
18 not equal or exceed the applicable total required by Section 3604 of this title within three
19 (3) years of the start date, or does not equal or exceed the applicable total required by
20 Section 3604 of this title at any other time during the ten-year period after the start date,
21 the incentive payments shall not be made and shall not be resumed until such time as

1 the actual verified gross payroll equals or exceeds the amounts specified in Section 3604
2 of this title.

3 C. If the average annualized wage required for an establishment does not equal or
4 exceed the amount specified in paragraph 1 or 2 of subsection F of Section 3604 of this
5 title during any calendar quarter, the incentive payments shall not be made and shall
6 not be resumed until such time as such requirements are met.

7 D. In no event shall incentive payments, cumulatively, exceed the estimated net
8 direct state benefits, except for establishments subject to the provisions of subparagraph
9 d of paragraph 6 of subsection A of Section 3603 of this title.

10 E. An establishment that has qualified pursuant to Section 3604 of this title may
11 receive payments only in accordance with the provisions of the law under which it
12 initially applied and was approved. If an establishment that is receiving incentive
13 payments expands, it may apply for additional incentive payments based on the gross
14 payroll anticipated from the expansion only, pursuant to Section 3604 of this title.

15 Provided, an establishment which has suffered an extraordinary adverse business
16 circumstance, as certified by the Incentive ~~Review~~ Approval Committee, may be allowed
17 to voluntarily withdraw from the Oklahoma Quality Jobs Program, repay to the
18 ~~Oklahoma~~ Tax Commission the total amount of incentive payments received pursuant to
19 the provisions of this section, plus interest at the rate specified in Section 727.1 of Title
20 12 of the Oklahoma Statutes, and reapply to the Department for a new incentive contract
21 if the establishment qualifies pursuant to the provisions of the Oklahoma Quality Jobs
22 Program Act. Any funds received by the Tax Commission pursuant to the provisions of

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1 this subsection shall be apportioned in the manner that income tax revenues are
2 apportioned.

3 F. An establishment that is receiving incentive payments may not apply for
4 additional incentive payments for any new projects until twelve (12) quarters after
5 receipt of the first incentive payment, or until the establishment's actual verified gross
6 payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars
7 (\$2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes
8 first. After meeting the requirements of this subsection, an establishment may apply for
9 additional incentive payments based upon the gross payroll anticipated from an
10 expansion only.

11 G. As soon as practicable after verification of the actual gross payroll as required by
12 this section and except as otherwise provided by subsection L of Section 3604 of this title,
13 the Tax Commission shall issue a warrant to the establishment in the amount of the net
14 benefit rate multiplied by the actual gross payroll as determined pursuant to subsection
15 A of this section for the calendar quarter.

16 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3904, as last amended by
17 Section 67 of Enrolled House Bill No. 2195 of the 1st Session of the 51st Oklahoma
18 Legislature, is amended to read as follows:

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

1 rate multiplied by the actual gross taxable payroll of new direct jobs as verified by the
2 Tax Commission.

3 B. In order to receive incentive payments, an establishment shall apply to the
4 Oklahoma Department of Commerce. The application shall be on a form prescribed by
5 the Department and shall contain such information as may be required by the
6 Department to determine if the applicant is qualified. The establishment may apply for
7 an effective date for a project, which shall not be more than twelve (12) months from the
8 date the application is submitted to the Department.

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

- 11 1. Be engaged in a basic industry;
- 12 2. Has no more than ninety full-time employees in this state on the date of
13 application nor an average of more than ninety full-time employees in this state during
14 the four calendar quarters immediately preceding the date of application;
- 15 3. Has a projected minimum employment, as determined by the Department, of
16 new direct jobs within twelve (12) months of the date of application as follows:
 - 17 a. if the establishment is located in a municipality with a population less
18 than three thousand five hundred (3,500) persons, as determined by
19 the Oklahoma State Data Center based on the most recent U.S.
20 Department of Commerce data, or if the establishment is located in an
21 unincorporated area and the largest municipality within twenty (20)
22 miles of the establishment is such a municipality, five new direct jobs,

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

15 Provided, for an establishment engaged in software publishing as defined or
16 classified in the NAICS Manual under Industry Group No. 5112, data processing, hosting
17 and related services as defined or classified in the NAICS Manual under Industry Group
18 No. 5182, computer systems design and related services as defined or classified in the
19 NAICS Manual under Industry Group No. 5415, scientific research and development
20 services as defined or classified in the NAICS Manual under Industry Group No. 5417,
21 medical and diagnostic laboratories as defined or classified in the NAICS Manual under
22 Industry Group No. 6215 or testing laboratories as defined or classified in the NAICS

1 Manual under U.S. Industry No. 541380, the projected minimum employment
2 requirements of this paragraph must be achieved within thirty-six (36) months of the
3 date of application;

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

- 9 a. those establishments in the NAICS Manual under the U.S. Industry
10 No. 541710 or 541380 are excused from the seventy-five percent (75%)
11 out-of-state sales requirement,
12 b. warehouses that serve as distribution centers for retail or wholesale
13 businesses shall be required to distribute forty percent (40%) of
14 inventory to out-of-state locations, and
15 c. adjustment and collection services activities defined or classified in the
16 NAICS Manual under U.S. Industry No. 561440 shall be required to
17 have seventy-five percent (75%) of loans to be serviced made by out-of-
18 state debtors;

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

- 21 a. one hundred twenty-five percent (125%) of the average county wage as
22 that percentage is determined by the Oklahoma State Data Center

1 based on the most recent U.S. Department of Commerce data for the
2 county in which the new direct jobs are located. For purposes of this
3 subparagraph, health care premiums paid by the applicant for
4 individuals in new direct jobs shall be included in the annualized
5 wage, ~~or~~

6 b. one hundred ten percent (110%) of the average county wage as that
7 percentage is determined by the Oklahoma State Data Center based
8 upon the most recent U.S. Department of Commerce data for the
9 county in which the new direct jobs are located. For purposes of this
10 subparagraph, health care premiums paid by the applicant for
11 individuals in new direct jobs shall not be included in the annualized
12 wage; or

13 c. one hundred percent (100%) of the average county wage, excluding
14 health care premiums paid by the applicant for individuals in new
15 direct jobs if the county in which the new jobs are located has:
16 (1) according to the most recent annual determination by the
17 Oklahoma Employment Security Commission, a county
18 unemployment rate more than ten percent (10%) higher than
19 the state unemployment rate, and
20 (2) according to the most recent ~~Federal Decennial Census~~ United
21 States Census Bureau Data, a county ~~median household income~~

1 ~~fifteen percent (15%) or more below the federal poverty level~~
2 personal poverty rate above fifteen percent (15%);

3 6. Has a basic health benefit plan which, as determined by the Department, meets
4 the elements established under divisions (1) through (7) of subparagraph b of paragraph
5 1 of subsection A of Section 3603 of this title and which will be offered to individuals
6 within twelve (12) months of employment in a new direct job;

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

9 8. Is not qualified for approval of an application for incentive payments under the
10 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former
11 Military Facility Development Act.

12 D. The Oklahoma Department of Commerce shall determine if an applicant is
13 qualified to receive the incentive payment. Upon qualifying the applicant, the
14 Department shall notify the Tax Commission and shall provide it with a copy of the
15 application, and approval which shall provide the number of persons employed by the
16 applicant upon the date of approval and the maximum total incentives which may be
17 paid to the applicant during the seven-year period. The Tax Commission may require
18 the qualified establishment to submit additional information as may be necessary to
19 administer the provisions of the Small Employer Quality Jobs Incentive Act. The
20 approved establishment shall report to the Tax Commission quarterly to show its
21 continued eligibility for incentive payments, as provided in Section 3905 of this title.

22 Establishments may be audited by the Tax Commission to verify such eligibility. Once

1 the establishment is approved, an agreement shall be deemed to exist between the
2 establishment and the State of Oklahoma, requiring incentive payments to be made for a
3 seven-year period as long as the establishment retains its eligibility and within the
4 limitations of the Small Employer Quality Jobs Incentive Act which existed at the time of
5 such approval. Any establishment which has been approved for incentive payments prior
6 to July 1, 2002, shall continue to receive such payments pursuant to the laws as they
7 existed prior to July 1, 2002, for any period of time of the original five-year period for
8 such payments remaining after July 1, 2002.

9 SECTION 4. This act shall become effective July 1, 2007.

10 SECTION 5. It being immediately necessary for the preservation of the public
11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
12 this act shall take effect and be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
14 dated 04-11-07 - DO PASS, As Amended.

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