STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 938 By: Mazzei

COMMITTEE SUBSTITUTE

An Act relating to economic development; creating the 21st Century Quality Jobs Incentive Act; providing short title; stating legislative intent and providing for certain construction; defining terms; providing for fifteen-year incentive payment for establishments meeting certain qualifications; requiring application be made to Oklahoma Department of Commerce and providing for forms and information related thereto; requiring Department to determine if applicant meets certain requirements and stating requirements; requiring Department to notify Oklahoma Tax Commission upon qualifying applicant; providing for additional information; requiring reporting continued eligibility to Tax Commission; providing for audit; providing for certain agreement; stating procedure for filing reports to claim incentive payment; providing for determination that requirements have been met and for incentive payments; allowing incentive payment for applicable years unless establishment becomes ineligible; creating special fund for certain purpose; limiting liability of state to fund balance; providing for promulgation of rules; providing penalty; deeming establishment receiving incentive payment and its contractors and subcontractors ineligible to receive certain tax credits and exemptions; requiring certain analysis and report; providing for codification; and providing an effective date.

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 3911 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 "21st Century Quality Jobs Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3912 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to attract growth industries and sectors to Oklahoma in the twenty-first century through a policy of rewarding businesses with a highly skilled, knowledge-based workforce;

2. The Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and

3. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3913 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the 21st Century Quality Jobs Incentive Act:

1. "Basic industry" means:

a. a basic industry as defined under the Oklahoma Quality Jobs Program Act in divisions (1) through (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes, excluding those activities described in division (10) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes. For the purposes of this act, if a determination is required by subdivision (b) of division (7) or by division (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes, such determination shall be:

(1) made by the Oklahoma Department of Commerce and not by the Incentive Approval Committee, and

(2) based on a requirement that those industries that are required to have at least seventy-five percent (75%) of total sales to out-of-state customers or buyers for purposes of the Quality Jobs Program Act shall only be required to have

fifty percent (50%) of total sales, as determined by the Department of Commerce, 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, for the purposes of this act,

b. (1) those specialty hospitals (except psychiatric and substance abuse hospitals) defined or classified in the NAICS Manual under U.S. Industry Group No. 62231, and

(2) those performing arts companies defined or classified in the NAICS Manual under U.S. Industry Group No.7111, and

c. an establishment classified in this subparagraph which has or will have within one (1) year sales of at least fifty percent (50%) of its total sales, as determined by the Department of Commerce, 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:

(1) those electric utility activities defined or classified in the NAICS Manual under U.S.

Industry Group No. 2211 which meet the requirements of subdivisions a, b and d of division 2 of subparagraph a of paragraph 1 of Section 3603 of Title 68 of the Oklahoma Statutes,

(2) those heavy and civil engineering construction activities defined or classified in the NAICS Manual under U.S. Industry Group No. 237,

(3) those motion picture and video industries defined or classified in the NAICS Manual under U.S. Industry Group No. 5121,

(4) those sound recording industries defined or classified in the NAICS Manual under U.S. Industry Group No. 5122,

(5) those securities, commodity contracts and other financial investment activities defined or classified in the NAICS Manual under U.S. Industry Group No. 523,

(6) those insurance carriers and related activities defined or classified in the NAICS Manual under U.S. Industry Group No. 524,

(7) those funds, trusts and other financial vehicles defined or classified in the NAICS Manual under U.S. Industry Group No. 525,

(8) those professional, scientific and technical services defined or classified in the NAICS Manual under U.S. Industry Group Nos. 5411, 5412, 5413, 5414, 5418 and 5419, and

(9) those electronic and precision equipment repair and maintenance activities defined or classified in the NAICS Manual under U.S. Industry Group No. 8112;

2. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation;

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 indirect state benefits” means the indirect new tax revenues projected by the Oklahoma Department of Commerce to accrue to the state, including but not limited to revenue generated from ancillary support jobs directly related to the establishment;

5. "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;

6. “Estimated indirect state costs” means the costs projected by the Department to accrue to the state as a result of new indirect jobs. Such costs shall include, but not be limited to, costs enumerated in subparagraphs a, b, c and d of paragraph 5 of this subsection;

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

8. “Estimated net direct and indirect state benefits” means the estimated direct and indirect state benefits less the estimated direct and indirect state costs;

9. "Full-time employment" means employment of persons residing in this state and working for thirty (30) hours per week or more in this state, which has a minimum six-month duration during any twelve-month period;

10. "Gross taxable payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

11. "Initial net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

a. the initial net benefit rate may be variable and shall not exceed seven percent (7%), and

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

12. "Fulfillment net benefit rate" means the estimated net direct and indirect state benefits computed as a percentage of gross payroll after the completion of the first twelve (12) quarters or until the establishment reaches ten (10) new direct jobs, whichever occurs first, provided:

a. the fulfillment net benefit rate may be variable and shall not exceed twenty percent (20%), and

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

13. "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. 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3914 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in the 21st Century Quality Jobs Incentive Act may receive quarterly incentive payments for a fifteen-year period from the Oklahoma Tax Commission pursuant to the provisions of this act, as verified by the Tax Commission, in an amount equal to:

1. The gross payroll multiplied by the initial net benefit rate until such time as the establishment creates ten (10) new direct jobs, or

2. The gross payroll multiplied by the fulfillment net benefit rate after such time as the establishment created and maintains ten (10) new direct jobs.

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. The establishment may apply for an effective date for a project, which shall not be more than twelve (12) months from the date the application is submitted to the Department.

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

1. Be engaged in a basic industry as defined in the 21st Century Quality Jobs Incentive Act;

2. Will hire at least ten (10) full-time employees in this state within twelve (12) quarters of the date of application;

3. Will pay the individuals it employs in new direct jobs an average annualized wage which equals or exceeds three hundred percent (300%) of the average state 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 state of Oklahoma.

4. 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 Title 68 of the Oklahoma Statutes and which will be offered to individuals within twelve (12) months of employment in a new direct job;

5. Has not received incentive payments under the Small Employer Quality Jobs Program Act, the Saving Quality Jobs Act or the Former Military Facility Development Act; and

6. Is not qualified for approval of an application for incentive payments under the Small Employer 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 contract 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 fifteen-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of Title 68 of the Oklahoma Statutes. 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 fifteen-year period as long as the establishment retains its eligibility and within the limitations of this act as it existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3915 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Beginning 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 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. In no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Department. 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 fifteen-year incentive period or until it is no longer qualified to receive incentive payments. Such reports shall constitute a claim for quarterly incentive payments by the establishment.

2. Upon receipt of a report for the initial calendar quarter of the incentive period and for each subsequent calendar quarter thereafter, the Tax Commission shall determine if the establishment has met the following requirements:

a. during the initial twelve (12) quarters of the contract or until the establishment creates ten (10) new direct jobs, paid the individuals it employed in new direct jobs an average annualized wage that exceeded the applicable percentage of the average state wage as determined by the Oklahoma Department of Commerce upon approval of the application, or

b. after the establishment created ten (10) new direct jobs:

(1) paid the individuals it employed in new direct jobs an average annualized wage which equaled or exceeded the applicable percentage of the average state wage as determined by the Oklahoma Department of Commerce upon approval of the application, and

(2) created and/or maintained the minimum number of new direct jobs as specified in this act.

3. Upon determining that an establishment has met the requirements of paragraph 2 of this subsection for the initial calendar quarter of the incentive period, the Tax Commission shall issue a warrant to the establishment in an amount which shall be equal to either:

a. the initial net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment during the initial twelve (12) quarters of the contract or until the establishment reaches ten (10) new direct jobs, whichever comes first, or

b. the fulfillment net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs

actually paid by the establishment after it creates or maintains ten (10) new direct jobs.

B. Except as provided in subsection C of this section, the quarterly incentive payment provided for in subsection A of this section shall be allowed in each of the fifty-nine (59) subsequent calendar quarters.

C. 1. An establishment which does not meet the requirements of paragraph 2 of subsection A of this section within twelve (12) quarters 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 fifty-nine (59) subsequent 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 calendar quarter in which such requirements are not met.

3. An establishment which at any time during the fifty-nine (59) subsequent quarters that does not meet, in four (4) consecutive quarters, the requirements of paragraph 2 of subsection A of this section shall be ineligible to receive any further incentive payments pursuant to its application and approval.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3916 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 "21st Century Quality Jobs Incentive Payment Fund". The Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum estimated by the Tax Commission to be sufficient to pay incentive payments claimed pursuant to the provisions of Section 4 of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the 21st Century Quality Jobs Incentive Act. The liability of the State of Oklahoma to make incentive payments under the 21st Century Quality Jobs Incentive Act shall be limited to the balance contained in the fund created by this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3917 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce and the Oklahoma Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of the 21st Century Quality Jobs Incentive Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3918 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement, invoice, or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a misdemeanor. The fine for a violation of this provision shall not be less than One Thousand Dollars ($1,000.00) nor more than Fifty Thousand Dollars ($50,000.00). Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3919 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the

provisions of the 21st Century Quality Jobs Incentive Act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Paragraphs 16 and 17 of Section 1357 of Title 68 of the Oklahoma Statutes;

2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma Statutes;

3. Section 2357.4 of Title 68 of the Oklahoma Statutes;

4. Section 2357.7 of Title 68 of the Oklahoma Statutes;

5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

6. Section 2357.22 of Title 68 of the Oklahoma Statutes;

7. Section 2357.31 of Title 68 of the Oklahoma Statutes;

8. Section 54003 of Title 68 of the Oklahoma Statutes;

9. Section 54006 of Title 68 of the Oklahoma Statutes;

10. Section 625.1 of Title 36 of the Oklahoma Statutes; or

11. Subsections C and D of Section 2357.59 of Title 68 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3920 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce shall prepare triennially a report which shall include, but not be limited to, documentation of

the new direct jobs created under this act and a fiscal analysis of the costs and benefits of the act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor no later than March 1, 2011, and every three (3) years thereafter. The report may be used for the purpose of determining whether to continue or sunset the 21st Century Quality Jobs Incentive Act.

SECTION 11. This act shall become effective November 1, 2009.

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