

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR ENGROSSED

5 SENATE BILL NO. 938

6 By: Mazzei, Gumm and Sparks of
7 the Senate

8 and

9 Sullivan and Jackson of the
10 House

11 SUBCOMMITTEE RECOMMENDATION

12 An Act relating to economic development; creating the
13 21st Century Quality Jobs Incentive Act; stating
14 legislative intent; defining terms; providing for
15 incentive payment for establishments meeting certain
16 qualifications; requiring application be made to
17 Oklahoma Department of Commerce; providing for forms
18 and information related thereto; requiring applicant
19 meet certain requirements; requiring Department to
20 provide Oklahoma Tax Commission certain notification
21 and information; requiring continued reporting of
22 eligibility to Tax Commission; providing for audit;
23 providing for certain agreement; stating procedure
24 for filing reports to claim incentive payment;
requiring Tax Commission to determine whether certain
requirements have been met; allowing incentive
payment for subsequent applicable years unless
establishment becomes ineligible; creating the 21st
Century Quality Jobs Incentive Payment Fund;
specifying purpose of fund; providing for expenditure
of funds; limiting liability of state to fund
balance; providing for promulgation of rules;
prohibiting certain acts; 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.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 3911 of Title 68, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "21st Century
6 Quality Jobs Incentive Act".

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

10 It is the intent of the Legislature that:

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

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

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

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

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

5 1. "Basic industry" means:

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

- 18 (1) made by the Oklahoma Department of Commerce and
19 not by the Incentive Approval Committee, and
20 (2) based on a requirement that those industries that
21 are required to have at least seventy-five
22 percent (75%) of total sales to out-of-state
23 customers or buyers for purposes of the Oklahoma
24 Quality Jobs Program Act shall only be required

1 to have fifty percent (50%) of total sales, as
2 determined by the Department of Commerce, to out-
3 of-state customers or buyers, to in-state
4 customers or buyers if the product or service is
5 resold by the purchaser to an out-of-state
6 customer or buyer for ultimate use, or to the
7 federal government, for the purposes of this act,

8 b. (1) those specialty hospitals (except psychiatric and
9 substance abuse hospitals) defined or classified
10 in the NAICS Manual under U.S. Industry Group No.
11 62231, and

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

15 c. an establishment classified in this subparagraph which
16 has or will have within one (1) year sales of at least
17 fifty percent (50%) of its total sales, as determined
18 by the Department of Commerce, to out-of-state
19 customers or buyers, to in-state customers or buyers
20 if the product or service is resold by the purchaser
21 to an out-of-state customer or buyer for ultimate use,
22 or to the federal government:

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

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

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

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

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

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

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

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

1 (8) those professional, scientific and technical
2 services defined or classified in the NAICS
3 Manual under U.S. Industry Group Nos. 5411, 5412,
4 5413, 5414, 5418 and 5419, and

5 (9) those electronic and precision equipment repair
6 and maintenance activities defined or classified
7 in the NAICS Manual under U.S. Industry Group No.
8 8112;

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

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

15 4. "Estimated indirect state benefits" means the indirect new
16 tax revenues projected by the Oklahoma Department of Commerce to
17 accrue to the state, including, but not limited to, revenue
18 generated from ancillary support jobs directly related to the
19 establishment;

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

23 a. the costs of education of new state resident children,
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1 b. the costs of public health, public safety and
2 transportation services to be provided to new state
3 residents,

4 c. the costs of other state services to be provided to
5 new state residents, and

6 d. the costs of other state services;

7 6. "Estimated indirect state costs" means the costs projected
8 by the Department to accrue to the state as a result of new indirect
9 jobs. Such costs shall include, but not be limited to, costs
10 enumerated in subparagraphs a, b, c and d of paragraph 5 of this
11 section;

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

14 8. "Estimated net direct and indirect state benefits" means the
15 estimated direct and indirect state benefits less the estimated
16 direct and indirect state costs;

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

21 10. "Gross taxable payroll" means wages, as defined in Section
22 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

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

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

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

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

10 a. the fulfillment net benefit rate may be variable and
11 shall not exceed ten percent (10%), and

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

15 13. "New direct job" means full-time employment which did not
16 exist in this state prior to the date of approval, by the Oklahoma
17 Department of Commerce, of an application made pursuant to this act.
18 A job shall be deemed to exist in this state prior to approval of an
19 application if the activities and functions for which the particular
20 job exists have been ongoing at any time within six (6) months prior
21 to such approval.

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

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

6 1. The gross payroll multiplied by the initial net benefit rate
7 until such time as the establishment creates ten new direct jobs; or

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

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

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

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

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

3 3. Will pay the individuals it employs in new direct jobs an
4 average annualized wage which equals or exceeds three hundred
5 percent (300%) of the average county wage as that percentage is
6 determined by the Oklahoma State Data Center based on the most
7 recent U.S. Department of Commerce data for the county in which the
8 applicant is located;

9 4. Has a basic health benefit plan which, as determined by the
10 Department, meets the elements established under divisions (1)
11 through (7) of subparagraph b of paragraph 1 of subsection A of
12 Section 3603 of Title 68 of the Oklahoma Statutes and which will be
13 offered to individuals within twelve (12) months of employment in a
14 new direct job;

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

18 6. Is not qualified for approval of an application for
19 incentive payments under the Small Employer Quality Jobs Incentive
20 Act, the Saving Quality Jobs Act or the Former Military Facility
21 Development Act.

22 D. The Oklahoma Department of Commerce shall determine if an
23 applicant is qualified to receive the incentive payment. Upon
24 qualifying the applicant, the Department shall notify the Tax

1 Commission and shall provide it with a copy of the contract and
2 approval which shall provide the number of persons employed by the
3 applicant upon the date of approval and the maximum total incentives
4 which may be paid to the applicant during the ten-year period. The
5 Tax Commission may require the qualified establishment to submit
6 additional information as may be necessary to administer the
7 provisions of this act. The approved establishment shall report to
8 the Tax Commission quarterly to show its continued eligibility for
9 incentive payments, as provided in Section 3905 of Title 68 of the
10 Oklahoma Statutes. Establishments may be audited by the Tax
11 Commission to verify such eligibility. Once the establishment is
12 approved, an agreement shall be deemed to exist between the
13 establishment and the State of Oklahoma, requiring incentive
14 payments to be made for a ten-year period as long as the
15 establishment retains its eligibility and within the limitations of
16 this act as it existed at the time of such approval.

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

20 A. 1. Beginning with the first complete calendar quarter after
21 the application of the establishment is approved by the Oklahoma
22 Department of Commerce, the establishment shall begin filing
23 quarterly reports with the Oklahoma Tax Commission that specify the
24 actual number and individual gross taxable payroll of new direct

1 jobs for the establishment and such other information as required by
2 the Tax Commission. In no event shall the first claim for incentive
3 payments be filed later than three (3) years from the start date
4 designated by the Department. The Tax Commission shall verify the
5 actual individual gross taxable payroll for new direct jobs. If the
6 Tax Commission is not able to provide such verification utilizing
7 all available resources, the Tax Commission may request additional
8 information from the establishment as may be necessary or may
9 request the establishment to revise its reports.

10 The establishment shall continue filing such reports during the
11 ten-year incentive period or until it is no longer qualified to
12 receive incentive payments. Such reports shall constitute a claim
13 for quarterly incentive payments by the establishment.

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

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

1 b. after the establishment created ten new direct jobs:

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

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

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

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

21 b. the fulfillment net benefit rate multiplied by the
22 amount of gross taxable payroll of new direct jobs
23 actually paid by the establishment after it creates or
24 maintains ten new direct jobs.

1 B. Except as provided in subsection C of this section, the
2 quarterly incentive payment provided for in subsection A of this
3 section shall be allowed in each of the thirty-nine (39) subsequent
4 calendar quarters.

5 C. 1. An establishment which does not meet the requirements of
6 paragraph 2 of subsection A of this section within twelve (12)
7 quarters of the date of its application shall be ineligible to
8 receive any incentive payments pursuant to its application and
9 approval.

10 2. An establishment which at any time during the thirty-nine
11 (39) subsequent calendar quarters does not meet the requirements of
12 paragraph 2 of subsection A of this section shall be ineligible to
13 receive an incentive payment during the calendar quarter in which
14 such requirements are not met.

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

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3916 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created within the State Treasury a special fund
24 for the Oklahoma Tax Commission to be designated the "21st Century

1 Quality Jobs Incentive Payment Fund". The Tax Commission is hereby
2 authorized and directed to withhold a portion of the taxes levied
3 and collected pursuant to Section 2355 of Title 68 of the Oklahoma
4 Statutes for deposit into the fund. The amount deposited shall
5 equal the sum estimated by the Tax Commission to be sufficient to
6 pay incentive payments claimed pursuant to the provisions of Section
7 4 of this act. All of the amounts deposited in such fund shall be
8 used and expended by the Tax Commission solely for the purposes and
9 in the amounts authorized by the 21st Century Quality Jobs Incentive
10 Act. The liability of the State of Oklahoma to make incentive
11 payments under the 21st Century Quality Jobs Incentive Act shall be
12 limited to the balance contained in the fund created by this
13 section.

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

17 The Oklahoma Department of Commerce and the Oklahoma Tax
18 Commission shall promulgate rules necessary to implement their
19 respective duties and responsibilities under the provisions of the
20 21st Century Quality Jobs Incentive Act.

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

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

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

20 Notwithstanding any other provision of law, if a qualified
21 establishment receives an incentive payment pursuant to the
22 provisions of the 21st Century Quality Jobs Incentive Act, neither
23 the qualified establishment nor its contractors or subcontractors
24 shall be eligible to receive the credits or exemptions provided for

1 in the following provisions of law in connection with the activity
2 for which the incentive payment was received:

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

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

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

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

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

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

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

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

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

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

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

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

20 The Oklahoma Department of Commerce shall prepare a report which
21 shall include, but not be limited to, documentation of the new
22 direct jobs created under this act and a fiscal analysis of the
23 costs and benefits of the act to the state. The report shall be
24 submitted to the President Pro Tempore of the Senate, the Speaker of

1 the House of Representatives and the Governor no later than March 1,
2 2011, and every three (3) years thereafter. The report may be used
3 for the purpose of determining whether to continue or sunset the
4 21st Century Quality Jobs Incentive Act.

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

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