

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR ENGROSSED

5 SENATE BILL NO. 1966

6 By: Justice of the Senate

7 and

8 McNiel of the House

9 SUBCOMMITTEE RECOMMENDATION

10 An Act relating to revenue and taxation; amending 68  
11 O.S. 2001, Sections 3904, as last amended by Section  
12 3, Chapter 357, O.S.L. 2007 and 3905, as last amended  
13 by Section 36, Chapter 281, O.S.L. 2006 (68 O.S.  
14 Supp. 2009, Sections 3904 and 3905), which relate to  
15 the Small Employer Quality Jobs Act; modifying  
16 provision related to time period for purposes of new  
17 direct job requirements; modifying provision related  
18 to time period for purpose of certain sales  
19 computation; modifying provision related to time  
20 period for purposes of ineligibility for receipt of  
21 incentive payments; and providing an effective date.

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

23 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3904, as  
24 last amended by Section 3, Chapter 357, O.S.L. 2007 (68 O.S. Supp.  
2009, Section 3904), is amended to read as follows:

Section 3904. A. An establishment which meets the  
qualifications specified in the Small Employer Quality Jobs

1 Incentive Act may receive quarterly incentive payments for a seven-  
2 year period from the Oklahoma Tax Commission pursuant to the  
3 provisions of the Small Employer Quality Jobs Incentive Act in an  
4 amount equal to the net benefit rate multiplied by the actual gross  
5 taxable payroll of new direct jobs as verified by the Tax  
6 Commission.

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

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

- 18 1. Be engaged in a basic industry;
- 19 2. Has no more than ninety full-time employees in this state on  
20 the date of application nor an average of more than ninety full-time  
21 employees in this state during the four calendar quarters  
22 immediately preceding the date of application;
- 23 3. Has a projected minimum employment, as determined by the  
24 Department, of new direct jobs within twelve (12) months of the date

1 of application, or after July 1, 2011, within twenty-four (24)  
2 months of the date of application, as follows:

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

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

20 c. if the establishment is located in a municipality with  
21 a population of seven thousand (7,000) persons or  
22 more, as determined by the Oklahoma State Data Center  
23 based on the most recent U.S. Department of Commerce  
24 data, or if the establishment is located in an

1 unincorporated area and the largest municipality  
2 within twenty (20) miles of the establishment is such  
3 a municipality, fifteen new direct jobs.

4 Provided, for an establishment engaged in software publishing as  
5 defined or classified in the NAICS Manual under Industry Group No.  
6 5112, data processing, hosting and related services as defined or  
7 classified in the NAICS Manual under Industry Group No. 5182,  
8 computer systems design and related services as defined or  
9 classified in the NAICS Manual under Industry Group No. 5415,  
10 scientific research and development services as defined or  
11 classified in the NAICS Manual under Industry Group No. 5417,  
12 medical and diagnostic laboratories as defined or classified in the  
13 NAICS Manual under Industry Group No. 6215 or testing laboratories  
14 as defined or classified in the NAICS Manual under U.S. Industry No.  
15 541380, the projected minimum employment requirements of this  
16 paragraph must be achieved within thirty-six (36) months of the date  
17 of application;

18 4. Has or will have within twelve (12) months of the date of  
19 application, or after July 1, 2011, within twenty-four (24) months  
20 of the date of application, as determined by the Department, sales  
21 of at least seventy-five percent (75%) of its total sales to out-of-  
22 state customers or buyers, to in-state customers or buyers if the  
23 product or service is resold by the purchaser to an out-of-state  
24

1 customer or buyer for ultimate use, or to the federal government,  
2 except that:

3 a. those establishments in the NAICS Manual under the  
4 U.S. Industry No. 541710 or 541380 are excused from  
5 the seventy-five percent (75%) out-of-state sales  
6 requirement,

7 b. warehouses that serve as distribution centers for  
8 retail or wholesale businesses shall be required to  
9 distribute forty percent (40%) of inventory to out-of-  
10 state locations, and

11 c. adjustment and collection services activities defined  
12 or classified in the NAICS Manual under U.S. Industry  
13 No. 561440 shall be required to have seventy-five  
14 percent (75%) of loans to be serviced made by out-of-  
15 state debtors;

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

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

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

11 c. one hundred percent (100%) of the average county wage,  
12 excluding health care premiums paid by the applicant  
13 for individuals in new direct jobs if the county in  
14 which the new jobs are located has:

15 (1) according to the most recent annual determination  
16 by the Oklahoma Employment Security Commission, a  
17 county unemployment rate more than ten percent  
18 (10%) higher than the state unemployment rate,  
19 and

20 (2) according to the most recent United States Census  
21 Bureau Data, a county personal poverty rate above  
22 fifteen percent (15%);

23 6. Has a basic health benefit plan which, as determined by the  
24 Department, meets the elements established under divisions (1)

1 through (7) of subparagraph b of paragraph 1 of subsection A of  
2 Section 3603 of this title and which will be offered to individuals  
3 within twelve (12) months of employment in a new direct job;

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

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

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

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

11 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3905, as  
12 last amended by Section 36, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
13 2009, Section 3905), is amended to read as follows:

14 Section 3905. A. 1. Beginning with the first complete  
15 calendar quarter after the application of the establishment is  
16 approved by the Oklahoma Department of Commerce, the establishment  
17 shall begin filing quarterly reports with the Oklahoma Tax  
18 Commission that specify the actual number and individual gross  
19 taxable payroll of new direct jobs for the establishment and such  
20 other information as required by the Tax Commission. In no event  
21 shall the first claim for incentive payments be filed later than  
22 three (3) years from the start date designated by the Department.  
23 The Tax Commission shall verify the actual individual gross taxable  
24 payroll for new direct jobs. If the Tax Commission is not able to

1 provide such verification utilizing all available resources, the Tax  
2 Commission may request additional information from the establishment  
3 as may be necessary or may request the establishment to revise its  
4 reports.

5 The establishment shall continue filing such reports during the  
6 seven-year incentive period or until it is no longer qualified to  
7 receive incentive payments. Such reports shall constitute a claim  
8 for quarterly incentive payments by the establishment.

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

- 13 a. created and or maintained the minimum number of new  
14 direct jobs as specified in paragraph 3 of subsection  
15 C of Section 3904 of this title, and  
16 b. paid the individuals it employed in new direct jobs an  
17 annualized wage which equaled or exceeded the  
18 applicable percentage of the average county wage as  
19 that percentage was determined by the Oklahoma  
20 Department of Commerce upon approval of the  
21 application.

22 3. Upon determining that an establishment has met the  
23 requirements of paragraph 2 of this subsection for the initial  
24 calendar quarter of the incentive period, the Tax Commission shall

1 issue a warrant to the establishment in an amount which shall be  
2 equal to the net benefit rate multiplied by the amount of gross  
3 taxable payroll of new direct jobs actually paid by the  
4 establishment.

5 B. Except as provided in subsection C of this section, the  
6 quarterly incentive payment provided for in subsection A of this  
7 section shall be allowed in each of the twenty-seven subsequent  
8 calendar quarters.

9 C. 1. An establishment which does not meet the requirements of  
10 paragraph 2 of subsection A of this section within twelve (12)  
11 months of the date of its application, or after July 1, 2011, within  
12 twenty-four (24) months of the date of its application, shall be  
13 ineligible to receive any incentive payments pursuant to its  
14 application and approval.

15 2. An establishment which at any time during the twenty-seven  
16 subsequent calendar quarters does not meet the requirements of  
17 paragraph 2 of subsection A of this section shall be ineligible to  
18 receive an incentive payment during the calendar quarter in which  
19 such requirements are not met.

20 SECTION 3. This act shall become effective January 1, 2011.

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