

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 938

6 By: Mazzei

7 COMMITTEE SUBSTITUTE

8 [economic development - incentive payment -
9 effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

20 It is the intent of the Legislature that:

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

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

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

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

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

15 1. "Basic industry" means:

16 a. a basic industry as defined under the Oklahoma Quality
17 Jobs Program Act in divisions (1) through (9) of
18 subparagraph a of paragraph 1 of subsection A of
19 Section 3603 of Title 68 of the Oklahoma Statutes,
20 excluding those activities described in division (10)
21 of subparagraph a of paragraph 1 of subsection A of
22 Section 3603 of Title 68 of the Oklahoma Statutes.
23 For the purposes of this act, if a determination is
24 required by subdivision (b) of division (7) or by

1 division (9) of subparagraph a of paragraph 1 of
2 subsection A of Section 3603 of Title 68 of the
3 Oklahoma Statutes, such determination shall be:

- 4 (1) made by the Oklahoma Department of Commerce and
5 not by the Incentive Approval Committee, and
6 (2) based on a requirement that those industries that
7 are required to have at least seventy-five
8 percent (75%) of total sales to out-of-state
9 customers or buyers for purposes of the Quality
10 Jobs Program Act shall only be required to have
11 fifty percent (50%) of total sales, as determined
12 by the Department of Commerce, to out-of-state
13 customers or buyers, to in-state customers or
14 buyers if the product or service is resold by the
15 purchaser to an out-of-state customer or buyer
16 for ultimate use, or to the federal government,
17 for the purposes of this act,

- 18 b. (1) those specialty hospitals (except psychiatric and
19 substance abuse hospitals) defined or classified
20 in the NAICS Manual under U.S. Industry Group No.
21 62231, and
22 (2) those performing arts companies defined or
23 classified in the NAICS Manual under U.S.
24 Industry Group No.7111, and

1 c. an establishment classified in this subparagraph which
2 has or will have within one (1) year sales of at least
3 fifty percent (50%) of its total sales, as determined
4 by the Department of Commerce, to out-of-state
5 customers or buyers, to in-state customers or buyers
6 if the product or service is resold by the purchaser
7 to an out-of-state customer or buyer for ultimate use,
8 or to the federal government:

9 (1) those electric utility activities defined or
10 classified in the NAICS Manual under U.S.
11 Industry Group No. 2211 which meet the
12 requirements of subdivisions a, b and d of
13 division 2 of subparagraph a of paragraph 1 of
14 Section 3603 of Title 68 of the Oklahoma
15 Statutes,

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

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

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

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

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

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

11 (8) those professional, scientific and technical
12 services defined or classified in the NAICS
13 Manual under U.S. Industry Group Nos. 5411, 5412,
14 5413, 5414, 5418 and 5419, and

15 (9) those electronic and precision equipment repair
16 and maintenance activities defined or classified
17 in the NAICS Manual under U.S. Industry Group No.
18 8112;

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

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

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

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

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

9 b. the costs of public health, public safety and

10 transportation services to be provided to new state
11 residents,

12 c. the costs of other state services to be provided to
13 new state residents, and

14 d. the costs of other state services;

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

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

22 8. "Estimated net direct and indirect state benefits" means the
23 estimated direct and indirect state benefits less the estimated
24 direct and indirect state costs;

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

5 10. "Gross taxable payroll" means wages, as defined in Section
6 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

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

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

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

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

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

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

23 13. "New direct job" means full-time employment which did not
24 exist in this state prior to the date of approval, by the Oklahoma

1 Department of Commerce, of an application made pursuant to this act.
2 A job shall be deemed to exist in this state prior to approval of an
3 application if the activities and functions for which the particular
4 job exists have been ongoing at anytime within six (6) months prior
5 to such approval.

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

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

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

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

20 B. In order to receive incentive payments, an establishment
21 shall apply to the Oklahoma Department of Commerce. The application
22 shall be on a form prescribed by the Department and shall contain
23 such information as may be required by the Department to determine
24 if the applicant is qualified. The establishment may apply for an

1 effective date for a project, which shall not be more than twelve
2 (12) months from the date the application is submitted to the
3 Department.

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

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

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

11 3. Will pay the individuals it employs in new direct jobs an
12 average annualized wage which equals or exceeds three hundred
13 percent (300%) of the average state wage as that percentage is
14 determined by the Oklahoma State Data Center based on the most
15 recent U.S. Department of Commerce data for the state of Oklahoma.

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

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

1 6. Is not qualified for approval of an application for
2 incentive payments under the Small Employer Quality Jobs Program
3 Act, the Saving Quality Jobs Act or the Former Military Facility
4 Development Act.

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

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

4 A. 1. Beginning with the first complete calendar quarter after
5 the application of the establishment is approved by the Oklahoma
6 Department of Commerce, the establishment shall begin filing
7 quarterly reports with the Oklahoma Tax Commission that specify the
8 actual number and individual gross taxable payroll of new direct
9 jobs for the establishment and such other information as required by
10 the Tax Commission. In no event shall the first claim for incentive
11 payments be filed later than three (3) years from the start date
12 designated by the Department. The Tax Commission shall verify the
13 actual individual gross taxable payroll for new direct jobs. If the
14 Tax Commission is not able to provide such verification utilizing
15 all available resources, the Tax Commission may request additional
16 information from the establishment as may be necessary or may
17 request the establishment to revise its reports.

18 The establishment shall continue filing such reports during the
19 fifteen-year incentive period or until it is no longer qualified to
20 receive incentive payments. Such reports shall constitute a claim
21 for quarterly incentive payments by the establishment.

22 2. Upon receipt of a report for the initial calendar quarter of
23 the incentive period and for each subsequent calendar quarter
24

1 thereafter, the Tax Commission shall determine if the establishment
2 has met the following requirements:

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

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

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

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

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

- 1 a. the initial net benefit rate multiplied by the amount
2 of gross taxable payroll of new direct jobs actually
3 paid by the establishment during the initial twelve
4 (12) quarters of the contract or until the
5 establishment reaches ten (10) new direct jobs,
6 whichever comes first, or
- 7 b. the fulfillment net benefit rate multiplied by the
8 amount of gross taxable payroll of new direct jobs
9 actually paid by the establishment after it creates or
10 maintains ten (10) new direct jobs.

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

15 C. 1. An establishment which does not meet the requirements of
16 paragraph 2 of subsection A of this section within twelve (12)
17 quarters of the date of its application shall be ineligible to
18 receive any incentive payments pursuant to its application and
19 approval.

20 2. An establishment which at any time during the fifty-nine
21 (59) subsequent calendar quarters does not meet the requirements of
22 paragraph 2 of subsection A of this section shall be ineligible to
23 receive an incentive payment during the calendar quarter in which
24 such requirements are not met.

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

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

9 There is hereby created within the State Treasury a special fund
10 for the Oklahoma Tax Commission to be designated the "21st Century
11 Quality Jobs Incentive Payment Fund". The Tax Commission is hereby
12 authorized and directed to withhold a portion of the taxes levied
13 and collected pursuant to Section 2355 of Title 68 of the Oklahoma
14 Statutes for deposit into the fund. The amount deposited shall
15 equal the sum estimated by the Tax Commission to be sufficient to
16 pay incentive payments claimed pursuant to the provisions of Section
17 4 of this act. All of the amounts deposited in such fund shall be
18 used and expended by the Tax Commission solely for the purposes and
19 in the amounts authorized by the 21st Century Quality Jobs Incentive
20 Act. The liability of the State of Oklahoma to make incentive
21 payments under the 21st Century Quality Jobs Incentive Act shall be
22 limited to the balance contained in the fund created by this
23 section.

24

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

4 The Oklahoma Department of Commerce and the Oklahoma Tax
5 Commission shall promulgate rules necessary to implement their
6 respective duties and responsibilities under the provisions of the
7 21st Century Quality Jobs Incentive Act.

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

11 Any person making an application, claim for payment or any
12 report, return, statement, invoice, or other instrument or providing
13 any other information pursuant to the provisions of this act who
14 willfully makes a false or fraudulent application, claim, report,
15 return, statement, invoice, or other instrument, or who willfully
16 provides any false or fraudulent information, or any person who
17 willfully aids or abets another in making such false or fraudulent
18 application, claim, report, return, statement, invoice, or other
19 instrument, or who willfully aids or abets another in providing any
20 false or fraudulent information, upon conviction, shall be guilty of
21 a misdemeanor. The fine for a violation of this provision shall not
22 be less than One Thousand Dollars (\$1,000.00) nor more than Fifty
23 Thousand Dollars (\$50,000.00). Any person convicted of a violation
24 of this section shall be liable for the repayment of all incentive

1 payments which were paid to the establishment. Interest shall be
2 due on such payments at the rate of ten percent (10%) per annum.

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

6 Notwithstanding any other provision of law, if a qualified
7 establishment receives an incentive payment pursuant to the
8 provisions of the 21st Century Quality Jobs Incentive Act, neither
9 the qualified establishment nor its contractors or subcontractors
10 shall be eligible to receive the credits or exemptions provided for
11 in the following provisions of law in connection with the activity
12 for which the incentive payment was received:

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

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

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

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

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

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

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

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

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

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

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

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

6 The Oklahoma Department of Commerce shall prepare triennially a
7 report which shall include, but not be limited to, documentation of
8 the new direct jobs created under this act and a fiscal analysis of
9 the costs and benefits of the act to the state. The report shall be
10 submitted to the President Pro Tempore of the Senate, the Speaker of
11 the House of Representatives and the Governor no later than March 1,
12 2011, and every three (3) years thereafter. The report may be used
13 for the purpose of determining whether to continue or sunset the
14 21st Century Quality Jobs Incentive Act.

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

16
17 52-1-1630 JCR 3/4/2009 2:13:10 PM

18
19
20
21
22
23
24