

1 ENGROSSED SENATE
2 BILL NO. 938

By: Mazzei, Gumm and Sparks of
the Senate

3 and

4 Sullivan and Jackson of the
5 House

6
7
8 [economic development - incentive payment -
9 codification -

10 effective date]

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

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

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

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

21 It is the intent of the Legislature that:

22 1. The State of Oklahoma provide appropriate incentives to
23 attract growth industries and sectors to Oklahoma in the twenty-

24

1 first century through a policy of rewarding businesses with a highly
2 skilled, knowledge-based workforce;

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

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

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

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

17 1. "Basic industry" means:

18 a. a basic industry as defined under the Oklahoma Quality
19 Jobs Program Act in divisions (1) through (9) of
20 subparagraph a of paragraph 1 of subsection A of
21 Section 3603 of Title 68 of the Oklahoma Statutes,
22 excluding those activities described in division (10)
23 of subparagraph a of paragraph 1 of subsection A of
24 Section 3603 of Title 68 of the Oklahoma Statutes.

1 For the purposes of this act, if a determination is
2 required by subdivision (b) of division (7) or by
3 division (9) of subparagraph a of paragraph 1 of
4 subsection A of Section 3603 of Title 68 of the
5 Oklahoma Statutes, such determination shall be:

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

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

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

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

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

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

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

- 1 (4) those sound recording industries defined or
2 classified in the NAICS Manual under U.S.
3 Industry Group No. 5122,
4 (5) those securities, commodity contracts and other
5 financial investment activities defined or
6 classified in the NAICS Manual under U.S.
7 Industry Group No. 523,
8 (6) those insurance carriers and related activities
9 defined or classified in the NAICS Manual under
10 U.S. Industry Group No. 524,
11 (7) those funds, trusts and other financial vehicles
12 defined or classified in the NAICS Manual under
13 U.S. Industry Group No. 525,
14 (8) those professional, scientific and technical
15 services defined or classified in the NAICS
16 Manual under U.S. Industry Group Nos. 5411, 5412,
17 5413, 5414, 5418 and 5419, and
18 (9) those electronic and precision equipment repair
19 and maintenance activities defined or classified
20 in the NAICS Manual under U.S. Industry Group No.
21 8112;

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

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

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

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

- 12 a. the costs of education of new state resident children,
- 13 b. the costs of public health, public safety and
14 transportation services to be provided to new state
15 residents,
- 16 c. the costs of other state services to be provided to
17 new state residents, and
- 18 d. the costs of other state services;

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

24

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

3 8. "Estimated net direct and indirect state benefits" means the
4 estimated direct and indirect state benefits less the estimated
5 direct and indirect state costs;

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

10 10. "Gross taxable payroll" means wages, as defined in Section
11 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

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

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

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

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

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

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

4 13. "New direct job" means full-time employment which did not
5 exist in this state prior to the date of approval, by the Oklahoma
6 Department of Commerce, of an application made pursuant to this act.
7 A job shall be deemed to exist in this state prior to approval of an
8 application if the activities and functions for which the particular
9 job exists have been ongoing at anytime within six (6) months prior
10 to such approval.

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

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

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

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

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

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

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

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

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

22 4. Has a basic health benefit plan which, as determined by the
23 Department, meets the elements established under divisions (1)
24 through (7) of subparagraph b of paragraph 1 of subsection A of

1 Section 3603 of Title 68 of the Oklahoma Statutes and which will be
2 offered to individuals within twelve (12) months of employment in a
3 new direct job;

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

7 6. Is not qualified for approval of an application for
8 incentive payments under the Small Employer Quality Jobs Program
9 Act, the Saving Quality Jobs Act or the Former Military Facility
10 Development 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 contract 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 ten-year period. The
18 Tax Commission may require the qualified establishment to submit
19 additional information as may be necessary to administer the
20 provisions of this act. The approved establishment shall report to
21 the Tax Commission quarterly to show its continued eligibility for
22 incentive payments, as provided in Section 3905 of Title 68 of the
23 Oklahoma Statutes. Establishments may be audited by the Tax
24 Commission to verify such eligibility. Once the establishment is

1 approved, an agreement shall be deemed to exist between the
2 establishment and the State of Oklahoma, requiring incentive
3 payments to be made for a ten-year period as long as the
4 establishment retains its eligibility and within the limitations of
5 this act as it existed at the time of such approval.

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

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

23 The establishment shall continue filing such reports during the
24 ten-year incentive period or until it is no longer qualified to

1 receive incentive payments. Such reports shall constitute a claim
2 for quarterly incentive payments by the establishment.

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

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

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

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

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

23 3. Upon determining that an establishment has met the
24 requirements of paragraph 2 of this subsection for the initial

1 calendar quarter of the incentive period, the Tax Commission shall
2 issue a warrant to the establishment in an amount which shall be
3 equal to either:

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

10 b. the fulfillment net benefit rate multiplied by the
11 amount of gross taxable payroll of new direct jobs
12 actually paid by the establishment after it creates or
13 maintains ten new direct jobs.

14 B. Except as provided in subsection C of this section, the
15 quarterly incentive payment provided for in subsection A of this
16 section shall be allowed in each of the thirty-nine (39) subsequent
17 calendar quarters.

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

23 2. An establishment which at any time during the thirty-nine
24 (39) subsequent calendar quarters does not meet the requirements of

1 paragraph 2 of subsection A of this section shall be ineligible to
2 receive an incentive payment during the calendar quarter in which
3 such requirements are not met.

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

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

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

1 limited to the balance contained in the fund created by this
2 section.

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

6 The Oklahoma Department of Commerce and the Oklahoma Tax
7 Commission shall promulgate rules necessary to implement their
8 respective duties and responsibilities under the provisions of the
9 21st Century Quality Jobs Incentive Act.

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

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

1 Thousand Dollars (\$50,000.00). Any person convicted of a violation
2 of this section shall be liable for the repayment of all incentive
3 payments which were paid to the establishment. Interest shall be
4 due on such payments at the rate of ten percent (10%) per annum.

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

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

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

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

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

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

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

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

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

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

- 1 9. Section 54006 of Title 68 of the Oklahoma Statutes;
- 2 10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
- 3 11. Subsections C and D of Section 2357.59 of Title 68 of the
- 4 Oklahoma Statutes.

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

8 The Oklahoma Department of Commerce shall prepare a report which
9 shall include, but not be limited to, documentation of the new
10 direct jobs created under this act and a fiscal analysis of the
11 costs and benefits of the act to the state. The report shall be
12 submitted to the President Pro Tempore of the Senate, the Speaker of
13 the House of Representatives and the Governor no later than March 1,
14 2011, and every three (3) years thereafter. The report may be used
15 for the purpose of determining whether to continue or sunset the
16 21st Century Quality Jobs Incentive Act.

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

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