

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 14, 2009

Committee Substitute for  
ENGROSSED  
Senate Bill No. 938

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 938 - By: MAZZEI,  
GUMM AND SPARKS of the Senate and SULLIVAN AND JACKSON of the House.

( economic development - 21st Century Quality Jobs Incentive Act - allowing  
incentive payment - 21st Century Quality Jobs Incentive Payment Fund -  
providing for expenditure of funds – codification -  
effective date )

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

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

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

9 It is the intent of the Legislature that:

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

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

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

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

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

16           1. "Basic industry" means:

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

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

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

6 (2) based on a requirement that those industries that are required  
7 to have at least seventy-five percent (75%) of total sales to out-  
8 of-state customers or buyers for purposes of the Oklahoma  
9 Quality Jobs Program Act shall only be required to have fifty  
10 percent (50%) of total sales, as determined by the Department of  
11 Commerce, to out-of-state customers or buyers, to in-state  
12 customers or buyers if the product or service is resold by the  
13 purchaser to an out-of-state customer or buyer for ultimate use,  
14 or to the federal government, for the purposes of this act,

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

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

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

1 customers or buyers, to in-state customers or buyers if the product or  
2 service is resold by the purchaser to an out-of-state customer or buyer  
3 for ultimate use, or to the federal government:

- 4 (1) those electric utility activities defined or classified in the NAICS  
5 Manual under U.S. Industry Group No. 2211 which meet the  
6 requirements of subdivisions a, b and d of division 2 of  
7 subparagraph a of paragraph 1 of Section 3603 of Title 68 of the  
8 Oklahoma Statutes,
- 9 (2) those heavy and civil engineering construction activities defined  
10 or classified in the NAICS Manual under U.S. Industry Group  
11 No. 237,
- 12 (3) those motion picture and video industries defined or classified in  
13 the NAICS Manual under U.S. Industry Group No. 5121,
- 14 (4) those sound recording industries defined or classified in the  
15 NAICS Manual under U.S. Industry Group No. 5122,
- 16 (5) those securities, commodity contracts and other financial  
17 investment activities defined or classified in the NAICS Manual  
18 under U.S. Industry Group No. 523,
- 19 (6) those insurance carriers and related activities defined or  
20 classified in the NAICS Manual under U.S. Industry Group No.  
21 524,

- 1 (7) those funds, trusts and other financial vehicles defined or  
2 classified in the NAICS Manual under U.S. Industry Group No.  
3 525,  
4 (8) those professional, scientific and technical services defined or  
5 classified in the NAICS Manual under U.S. Industry Group Nos.  
6 5411, 5412, 5413, 5414, 5418 and 5419, and  
7 (9) those electronic and precision equipment repair and  
8 maintenance activities defined or classified in the NAICS  
9 Manual under U.S. Industry Group No. 8112;

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

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

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

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

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

- 1           b.     the costs of public health, public safety and transportation services to  
2                     be provided to new state residents,  
3           c.     the costs of other state services to be provided to new state residents,  
4                     and  
5           d.     the costs of other state services;

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

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

11          8. "Estimated net direct and indirect state benefits" means the estimated direct and  
12 indirect state benefits less the estimated direct and indirect state costs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           3. Will pay the individuals it employs in new direct jobs an average annualized  
18 wage which equals or exceeds three hundred percent (300%) of the average county wage  
19 as that percentage is 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 applicant is  
21 located;

1 4. Has a basic health benefit plan which, as determined by the Department, meets  
2 the elements established under divisions (1) through (7) of subparagraph b of paragraph  
3 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes and which will be  
4 offered to individuals within twelve (12) months of employment in a new direct job;

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

8 6. Is not qualified for approval of an application for incentive payments under the  
9 Small Employer Quality Jobs Incentive Act, the Saving Quality Jobs Act or the Former  
10 Military Facility Development Act.

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

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

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

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

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

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

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

- 11           (1)     paid the individuals it employed in new direct jobs an average  
12                   annualized wage which equaled or exceeded the applicable  
13                   percentage of the average state wage as determined by the  
14                   Oklahoma Department of Commerce upon approval of the  
15                   application, and  
16           (2)     created and/or maintained the minimum number of new direct  
17                   jobs as specified in this act.

18          3. Upon determining that an establishment has met the requirements of paragraph  
19 2 of this subsection for the initial calendar quarter of the incentive period, the Tax  
20 Commission shall issue a warrant to the establishment in an amount which shall be  
21 equal to either:

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

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

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

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

1 eligible to receive the credits or exemptions provided for in the following provisions of law  
2 in connection with the activity for which the incentive payment was received:

- 3 1. Paragraphs 16 and 17 of Section 1357 of Title 68 of the Oklahoma Statutes;
- 4 2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma Statutes;
- 5 3. Section 2357.4 of Title 68 of the Oklahoma Statutes;
- 6 4. Section 2357.7 of Title 68 of the Oklahoma Statutes;
- 7 5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
- 8 6. Section 2357.22 of Title 68 of the Oklahoma Statutes;
- 9 7. Section 2357.31 of Title 68 of the Oklahoma Statutes;
- 10 8. Section 54003 of Title 68 of the Oklahoma Statutes;
- 11 9. Section 54006 of Title 68 of the Oklahoma Statutes;
- 12 10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
- 13 11. Subsections C and D of Section 2357.59 of Title 68 of the Oklahoma Statutes.

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

17 The Oklahoma Department of Commerce shall prepare a report which shall include,  
18 but not be limited to, documentation of the new direct jobs created under this act and a  
19 fiscal analysis of the costs and benefits of the act to the state. The report shall be  
20 submitted to the President Pro Tempore of the Senate, the Speaker of the House of  
21 Representatives and the Governor no later than March 1, 2011, and every three (3) years

1 thereafter. The report may be used for the purpose of determining whether to continue  
2 or sunset the 21st Century Quality Jobs Incentive Act.

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

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
5 dated 04-13-09 - DO PASS, As Amended.