

CS for SB 938

1 THE STATE SENATE  
2 Monday, February 23, 2009

3 Committee Substitute for  
4 Senate Bill No. 938

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 938 - By: Mazzei, Gumm and  
6 Sparks of the Senate and Sullivan and Jackson of the House.

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

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

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

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

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

18 It is the intent of the Legislature that:

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

23 2. The Oklahoma Department of Commerce and the Oklahoma Tax  
24 Commission implement the provisions of this act and exercise all

1 powers as authorized in this act. The exercise of powers conferred  
2 by this act shall be deemed and held to be the performance of  
3 essential public purposes; and

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

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

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

13 1. "Basic industry" means:

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

1 subsection A of Section 3603 of Title 68 of the  
2 Oklahoma Statutes, such determination shall be:

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

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

- 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;

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

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

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

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

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

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

1 enumerated in subparagraphs a, b, c and d of paragraph 5 of this  
2 subsection;

3 7. "Estimated net direct state benefits" means the estimated  
4 direct state benefits less the estimated direct state costs;

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

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

12 10. "Gross taxable payroll" means wages, as defined in Section  
13 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

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

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

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

20 12. "Fulfillment net benefit rate" means the estimated net  
21 direct and indirect state benefits computed as a percentage of gross  
22 payroll after the completion of the first twelve (12) quarters or

1 until the establishment reaches ten (10) new direct jobs, whichever  
2 occurs first, provided:

- 3 a. the fulfillment net benefit rate may be variable and  
4 shall not exceed twenty percent (20%), and
- 5 b. in no event shall incentive payments, cumulatively,  
6 exceed the estimated net direct and indirect state  
7 benefits; and

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

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

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

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

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

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 as defined in the 21st  
19 Century Quality Jobs Incentive Act;

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

22           3. Will pay the individuals it employs in new direct jobs an  
23 average annualized wage which equals or exceeds three hundred

1 percent (300%) of the average state wage as that percentage is  
2 determined by the Oklahoma State Data Center based on the most  
3 recent U.S. Department of Commerce data for the state of Oklahoma.

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

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

13 6. Is not qualified for approval of an application for  
14 incentive payments under the Small Employer Quality Jobs Program  
15 Act, the Saving Quality Jobs Act or the Former Military Facility  
16 Development Act.

17 D. The Oklahoma Department of Commerce shall determine if an  
18 applicant is qualified to receive the incentive payment. Upon  
19 qualifying the applicant, the Department shall notify the Tax  
20 Commission and shall provide it with a copy of the contract and  
21 approval which shall provide the number of persons employed by the  
22 applicant upon the date of approval and the maximum total incentives  
23 which may be paid to the applicant during the fifteen-year period.

1 The Tax Commission may require the qualified establishment to submit  
2 additional information as may be necessary to administer the  
3 provisions of this act. The approved establishment shall report to  
4 the Tax Commission quarterly to show its continued eligibility for  
5 incentive payments, as provided in Section 3905 of Title 68 of the  
6 Oklahoma Statutes. Establishments may be audited by the Tax  
7 Commission to verify such eligibility. Once the establishment is  
8 approved, an agreement shall be deemed to exist between the  
9 establishment and the State of Oklahoma, requiring incentive  
10 payments to be made for a fifteen-year period as long as the  
11 establishment retains its eligibility and within the limitations of  
12 this act as it existed at the time of such approval.

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

16 A. 1. Beginning with the first complete calendar quarter after  
17 the application of the establishment is approved by the Oklahoma  
18 Department of Commerce, the establishment shall begin filing  
19 quarterly reports with the Oklahoma Tax Commission that specify the  
20 actual number and individual gross taxable payroll of new direct  
21 jobs for the establishment and such other information as required by  
22 the Tax Commission. In no event shall the first claim for incentive  
23 payments be filed later than three (3) years from the start date

1 designated by the Department. The Tax Commission shall verify the  
2 actual individual gross taxable payroll for new direct jobs. If the  
3 Tax Commission is not able to provide such verification utilizing  
4 all available resources, the Tax Commission may request additional  
5 information from the establishment as may be necessary or may  
6 request the establishment to revise its reports.

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

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

- 15 a. during the initial twelve (12) quarters of the  
16 contract or until the establishment creates ten (10)  
17 new direct jobs, paid the individuals it employed in  
18 new direct jobs an average annualized wage that  
19 exceeded the applicable percentage of the average  
20 state wage as determined by the Oklahoma Department of  
21 Commerce upon approval of the application, or  
22 b. after the establishment created ten (10) new direct  
23 jobs:

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

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

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

14 a. the initial net benefit rate multiplied by the amount  
15 of gross taxable payroll of new direct jobs actually  
16 paid by the establishment during the initial twelve  
17 (12) quarters of the contract or until the  
18 establishment reaches ten (10) new direct jobs,  
19 whichever comes first, or

20 b. the fulfillment net benefit rate multiplied by the  
21 amount of gross taxable payroll of new direct jobs  
22 actually paid by the establishment after it creates or  
23 maintains ten (10) 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 fifty-nine (59) 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 fifty-nine  
11 (59) 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 fifty-nine  
16 (59) 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:

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

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

19           The Oklahoma Department of Commerce and the Oklahoma Tax  
20 Commission shall promulgate rules necessary to implement their  
21 respective duties and responsibilities under the provisions of the  
22 21st Century Quality Jobs Incentive Act.

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

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

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

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

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

10          2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma  
11 Statutes;

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

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

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

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

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

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

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

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

20          11. Subsections C and D of Section 2357.59 of Title 68 of the  
21 Oklahoma Statutes.

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-17-09 - DO PASS,  
15 As Amended and Coauthored.