

1 STATE OF OKLAHOMA

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

3 SENATE BILL 938

By: Mazzei

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6 AS INTRODUCED

7 An Act relating to economic development; creating the
8 21st Century Quality Jobs Incentive Act; providing
9 short title; stating legislative intent and providing
10 for certain construction; defining terms; providing
11 for fifteen-year incentive payment for establishments
12 meeting certain qualifications; requiring application
13 be made to Oklahoma Department of Commerce and
14 providing for forms and information related thereto;
15 requiring Department to determine if applicant meets
16 certain requirements and stating requirements;
17 requiring Department to notify Oklahoma Tax
18 Commission upon qualifying applicant; providing for
19 additional information; requiring reporting continued
20 eligibility to Tax Commission; providing for audit;
21 providing for certain agreement; stating procedure
22 for filing reports to claim incentive payment;
23 providing for determination that requirements have
24 been met and for incentive payments; allowing
incentive payment for subsequent applicable years
unless establishment becomes ineligible; creating
special fund for certain purpose; limiting liability
of state to fund balance; providing for promulgation
of rules; providing penalty; deeming establishment
receiving incentive payment and its contractors and
subcontractors ineligible to receive certain tax
credits and exemptions; requiring certain analysis
and report; providing for codification; and providing
an effective date.

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

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

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

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

9 It is the intent of the Legislature that:

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

14 2. The Oklahoma Department of Commerce and the Oklahoma Tax
15 Commission implement the provisions of this act and exercise all
16 powers as authorized in this act. The exercise of powers conferred
17 by this act shall be deemed and held to be the performance of
18 essential public purposes; and

19 3. Nothing herein shall be construed to constitute a guarantee
20 or assumption by the State of Oklahoma of any debt of any
21 individual, company, corporation or association nor to authorize the
22 credit of the State of Oklahoma to be given, pledged or loaned to
23 any individual, company, corporation or association.

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

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

5 1. "Basic industry" means:

6 a. a basic industry as defined under the Oklahoma Quality
7 Jobs Program Act in divisions (1) through (9) of
8 subparagraph a of paragraph 1 of subsection A of
9 Section 3603 of Title 68 of the Oklahoma Statutes,
10 excluding those activities described in division (10)
11 of subparagraph a of paragraph 1 of subsection A of
12 Section 3603 of Title 68 of the Oklahoma Statutes
13 Provided, for the purposes of this act, the
14 determination required by subdivision (b) of division
15 (7) or division (8) of subparagraph a of paragraph 1
16 of subsection A of Section 3603 of Title 68 of the
17 Oklahoma Statutes shall be made by the Oklahoma
18 Department of Commerce and not the Incentive Approval
19 Committee,

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
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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 use, or to
11 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,

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

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

21 (4) those sound recording industries defined or
22 classified in the NAICS Manual under U.S.
23 Industry Group No. 5122,
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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,
14 5412, 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 net direct state benefits" means the estimated
16 direct state benefits less the estimated direct state costs;

17 7. "Estimated net direct and indirect state benefits" means the
18 estimated direct and indirect state benefits less the estimated
19 direct state costs";

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

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1 9. "Gross taxable payroll" means wages, as defined in Section
2 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs;

3 10. "Initial net benefit rate" means the estimated net direct
4 state benefits computed as a percentage of gross payroll; provided:

5 a. the initial net benefit rate may be variable and shall
6 not exceed five percent (5%), and

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

9 11. "Subsequent net benefit rate" means the estimated net
10 direct and indirect state benefits computed as a percentage of gross
11 payroll after the completion of the first twelve (12) quarters or
12 until the establishment reaches full employment, whichever occurs
13 first, provided:

14 a. the subsequent net benefit rate may be variable and
15 shall not exceed twenty percent (20%), and

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

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

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

6 A. An establishment which meets the qualifications specified in
7 the 21st Century Quality Jobs Incentive Act may receive quarterly
8 incentive payments for a fifteen-year period from the Oklahoma Tax
9 Commission pursuant to the provisions of this act in an amount equal
10 to the net benefit rate multiplied by the actual gross taxable
11 payroll of new direct jobs as verified by the Tax Commission.

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

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

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

1 2. Has at least ten (10) full-time employees in this state on
2 the date of application;

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

5 a. three hundred percent (300%) of the average state
6 wage as that percentage is determined by the
7 Oklahoma State Data Center based on the most
8 recent U.S. Department of Commerce data for the
9 state of Oklahoma. For purposes of this
10 subparagraph, health care premiums paid by the
11 applicant for individuals in new direct jobs
12 shall be included in the annualized wage,

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

19 5. Has not received incentive payments under the Oklahoma
20 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former
21 Military Facility Development Act; and

22 6. Is not qualified for approval of an application for
23 incentive payments under the Oklahoma Quality Jobs Program Act, the
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1 Saving Quality Jobs Act, or the Former Military Facility Development
2 Act.

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

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

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

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

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

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1 a. created and or maintained the minimum number of new
2 direct jobs as specified in the 21st Century Quality
3 Jobs Incentive Act, and

4 b. paid the individuals it employed in new direct jobs an
5 annualized wage which equaled or exceeded the
6 applicable percentage of the average state wage as
7 that percentage was determined by the Oklahoma
8 Department of Commerce upon approval of the
9 application.

10 3. Upon determining that an establishment has met the
11 requirements of paragraph 2 of this subsection for the initial
12 calendar quarter of the incentive period, the Tax Commission shall
13 issue a warrant to the establishment in an amount which shall be
14 equal to the net benefit rate multiplied by the amount of gross
15 taxable payroll of new direct jobs actually paid by the
16 establishment.

17 B. Except as provided in subsection C of this section, the
18 quarterly incentive payment provided for in subsection A of this
19 section shall be allowed in each of the fifty-nine (59) subsequent
20 calendar quarters.

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

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

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

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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.

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