

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 2326

6 By: Lockhart

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; creating the
9 Rural Value Added Quality Jobs Act; stating
10 legislative intent; defining terms; creating
11 Incentive Approval Committee; specifying membership
12 and duties of Committee; providing for quarterly
13 incentive payments to certain establishments;
14 specifying amount of payments; specifying application
15 procedures; providing eligibility requirements;
16 requiring Oklahoma Department of Commerce determine
17 applicant eligibility; requiring cost benefit
18 analysis; limiting eligibility based on result of
19 analysis; allowing Oklahoma Tax Commission to require
20 additional information; allowing Tax Commission to
21 audit to verify eligibility; providing that agreement
22 exists under certain conditions; allowing
23 municipalities to receive portion of payments under
24 certain circumstances; requiring Tax Commission
approval; creating Rural Value Added Quality Jobs
Incentive Payment Fund; authorizing Tax Commission to
withhold portion of income taxes for deposit into
fund; providing for determination of withheld amount;
limiting permissible uses of funds; limiting
liability of state; requiring filing of claim for
payment within certain time period; restating gross
payroll requirements; restating limit on amount of
payments; allowing eligibility of expansion;
providing extraordinary adverse business circumstance
procedures; providing time limitation for application
for additional incentives; requiring Tax Commission
to issue certain warrant; providing ineligibility for
certain other incentives based on participation;
providing exception; allowing certain incentive
simultaneously; requiring certain determination

1 letter; requiring Department of Commerce and Tax
2 Commission to promulgate certain rules; prohibiting
3 certain act; providing punishment; requiring
4 Department of Commerce to prepare certain report;
5 providing for codification; and providing an
6 effective date.

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

8 SECTION 1. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3951 of Title 68, unless there
10 is created a duplication in numbering, reads as follows:

11 This act shall be known and may be cited as the "Rural Value
12 Added Quality Jobs Act".

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3952 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 It is the intent of the Legislature that:

17 1. The State of Oklahoma provide appropriate incentives to
18 support establishments of basic industries that hold the promise of
19 significant development of the rural economy of the State of
20 Oklahoma;

21 2. The amount of incentives provided pursuant to this act in
22 connection with a particular establishment:
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1 a. be directly related to the jobs created as a result of
2 the establishment locating in rural areas of the State
3 of Oklahoma, and

4 b. not exceed the estimated net direct state benefits
5 that will accrue to the state as a result of the
6 establishment locating in rural areas of the State of
7 Oklahoma;

8 3. The Oklahoma Department of Commerce and the Oklahoma Tax
9 Commission implement the provisions of this act and exercise all
10 powers as authorized in this act. The exercise of powers conferred
11 by this act shall be deemed and held to be the performance of
12 essential public purposes; and

13 4. Nothing herein shall be construed to constitute a guarantee
14 or assumption by the State of Oklahoma of any debt of any
15 individual, company, corporation or association nor to authorize the
16 credit of the State of Oklahoma to be given, pledged or loaned to
17 any individual, company, corporation or association.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3953 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 A. As used in the Rural Value Added Quality Jobs Act:

22 1. "Basic industry" means those activities:
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- 1 a. defined or classified in the NAICS Manual under
2 Section Nos. 11, 22, 23, 31, 32, 33, 42, 44, 45, 48,
3 49, 51, 53, 54, 55, 56, 61, 62 and 81, and
4 b. related to extraction of crude petroleum and natural
5 gas defined or classified in the NAICS Manual under
6 Industry Group No. 2111, subject to the limitations
7 provided in subsection B of this section;

8 2. "Change-in-control event" means the transfer to one or more
9 unrelated establishments or unrelated persons, of either:

- 10 a. beneficial ownership of more than fifty percent (50%)
11 in value and more than fifty percent (50%) in voting
12 power of the outstanding equity securities of the
13 transferred establishment, or
14 b. more than fifty percent (50%) in value of the assets
15 of an establishment.

16 A transferor shall be treated as related to a transferee if more
17 than fifty percent (50%) of the voting interests of the transferor
18 and transferee are owned, directly or indirectly, by the other or
19 are owned, directly or indirectly, by the same person or persons,
20 unless such transferred establishment has an outstanding class of
21 equity securities registered under Sections 12(b) or 15(d) of the
22 Securities Exchange Act of 1934, as amended, in which event the
23 transferor and transferee will be treated as unrelated; provided, an
24 establishment applying for the Rural Value Added Quality Jobs Act as

1 a result of a change-in-control event is required to apply within
2 one hundred eighty (180) days of the change-in-control event to
3 qualify for consideration. An establishment entering the Rural
4 Value Added Quality Jobs Act as the result of a change-in-control
5 event shall be required to maintain a level of new direct jobs as
6 agreed to in its contract with the Oklahoma Department of Commerce
7 and to pay new direct jobs an average annualized wage which equals
8 or exceeds one hundred twenty-five percent (125%) of the average
9 county wage as that percentage is determined by the Oklahoma State
10 Data Center based upon the most recent U.S. Department of Commerce
11 data for the county in which the new jobs are located. For purposes
12 of this paragraph, healthcare premiums paid by the applicant for
13 individuals in new direct jobs shall not be included in the
14 annualized wage. Such establishment entering the Rural Value Added
15 Quality Jobs Act as the result of a change-in-control event shall be
16 required to retain the contracted average annualized wage and
17 maintain the contracted maintenance level of new direct jobs numbers
18 as certified by the Oklahoma Tax Commission. If the required
19 average annualized wage or the required new direct jobs numbers do
20 not equal or exceed such contracted level during any quarter, the
21 quarterly incentive payments shall not be made and shall not be
22 resumed until such time as such requirements are met. An
23 establishment described in this paragraph shall be required to repay
24 all incentive payments received under the Rural Value Added Quality

1 Jobs Act if the establishment is determined by the Oklahoma Tax
2 Commission to no longer have business operations in the state within
3 three (3) years from the beginning of the calendar quarter for which
4 the first incentive payment claim is filed;

5 3. "New direct job":

6 a. means full-time-equivalent employment in this state of
7 a resident of this state in an establishment which has
8 qualified to receive an incentive payment pursuant to
9 the provisions of the Rural Value Added Quality Jobs
10 Act which employment did not exist in this state prior
11 to the date of approval by the Department of the
12 application of the establishment pursuant to the
13 provisions of Section 4 of this act; provided, that if
14 an application of an establishment is approved by the
15 Department of Commerce after a change-in-control event
16 and the Director of the Department of Commerce
17 determines that the jobs located at such establishment
18 are likely to leave the state, "new direct job" shall
19 include employment that existed in this state prior to
20 the date of application which is retained in this
21 state by the new establishment following a change-in-
22 control event, if such job otherwise qualifies as a
23 new direct job, and
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1 b. shall include full-time-equivalent employment in this
2 state of employees who are employed by an employment
3 agency or similar entity other than the establishment
4 which has qualified to receive an incentive payment
5 and who are leased or otherwise provided under
6 contract to the qualified establishment, if such job
7 did not exist in this state prior to the date of
8 approval by the Department of the application of the
9 establishment or the job otherwise qualifies as a new
10 direct job following a change-in-control event. A job
11 shall be deemed to exist in this state prior to
12 approval of an application if the activities and
13 functions for which the particular job exists have
14 been ongoing at any time within six (6) months prior
15 to such approval;

16 4. "Estimated direct state benefits" means the tax revenues
17 projected by the Department to accrue to the state as a result of
18 new direct jobs;

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

22 a. the costs of education of new state resident children,
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- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services;

6. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

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

- a. the net benefit rate may be variable and shall not exceed five percent (5%), and
- b. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

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

- 9. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political

1 subdivision of the State of Oklahoma; or trust
2 authority; provided, distinct, identifiable subunits
3 of such entities may be determined to be an
4 establishment, for all purposes of the Rural Value
5 Added Quality Jobs Act, by the Department subject to
6 the following conditions:

7 (1) within three (3) years of the first complete
8 calendar quarter following the start date, the
9 entity must have a minimum payroll of Five
10 Hundred Thousand Dollars (\$500,000.00) and the
11 subunit must also have or will have a minimum
12 payroll of Five Hundred Thousand Dollars
13 (\$500,000.00),

14 (2) the subunit is engaged in an activity or service
15 or produces a product which is demonstratively
16 independent and separate from the entity's other
17 activities, services or products and could be
18 conducted or produced in the absence of any other
19 activity, service or production of the entity,

20 (3) has an accounting system capable of tracking or
21 facilitating an audit of the subunit's payroll,
22 expenses, revenue and production. Limited
23 interunit overlap of administrative and
24 purchasing functions shall not disqualify a

1 subunit from consideration as an establishment by
2 the Department,

3 (4) the entity has not previously had a subunit
4 determined to be an establishment pursuant to
5 this section, and

6 (5) it is determined by the Department that the
7 entity will have a probable net gain in total
8 employment within the incentive period.

9 b. The Department may promulgate rules to further limit
10 the circumstances under which a subunit may be
11 considered an establishment. The Department shall
12 promulgate rules to determine whether a subunit of an
13 entity achieves a net gain in total employment. The
14 Department shall establish criteria for determining
15 the period of time within which such gain must be
16 demonstrated and a method for determining net gain in
17 total employment;

18 10. "NAICS Manual" means any manual, book or other publication
19 containing the North American Industry Classification System, United
20 States, 1997, promulgated by the Office of Management and Budget of
21 the United States of America, or the latest revised edition;

22 11. "SIC Manual" means the 1987 revision to the Standard
23 Industrial Classification Manual, promulgated by the Office of
24 Management and Budget of the United States of America;

1 12. "Start date" means the date on which an establishment may
2 begin accruing benefits for the creation of new direct jobs, which
3 date shall be determined by the Department;

4 13. "Effective date" means the date of approval of a contract
5 under which incentive payments will be made pursuant to the Rural
6 Value Added Quality Jobs Act, which shall be the date the signed and
7 accepted incentive contract is received by the Department; provided,
8 an approved project may have a start date which is different from
9 the effective date; and

10 14. "Qualifying county" means a county in this state with an
11 unemployment rate of eight percent (8%) or greater at the time of
12 application or at any time within the year immediately preceding
13 application according to the Oklahoma Employment Security
14 Commission.

15 B. The Incentive Approval Committee is hereby created and shall
16 consist of the Director of the Office of State Finance, the Director
17 of the Department and one member of the Oklahoma Tax Commission
18 appointed by the Tax Commission, or a designee from each agency
19 approved by such member. It shall be the duty of the Committee to
20 determine, upon initial application on a form approved by the
21 Committee, if an establishment is engaged in a basic industry as
22 defined in this section.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3954 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as otherwise provided in subsection I of this
5 section, an establishment which meets the qualifications specified
6 in the Rural Value Added Quality Jobs Act may receive quarterly
7 incentive payments for a ten-year period from the Oklahoma Tax
8 Commission pursuant to the provisions of the Rural Value Added
9 Quality Jobs Act. The amount of such payments shall be equal to the
10 net benefit rate multiplied by the actual gross payroll of new
11 direct jobs for a calendar quarter as verified by the Oklahoma
12 Employment Security Commission.

13 B. In order to receive incentive payments, an establishment
14 shall apply to the Oklahoma Department of Commerce. The application
15 shall be on a form prescribed by the Department and shall contain
16 such information as may be required by the Department to determine
17 if the applicant is qualified. An establishment may apply for an
18 effective date for a project, which shall not be more than twenty-
19 four (24) months from the date the application is submitted to the
20 Department.

21 C. Except as otherwise provided by subsection D or E of this
22 section, in order to qualify to receive such payments, the
23 establishment applying shall be required to:

24 1. Be located in a qualifying county;

1 2. Be engaged in a basic industry;

2 3. Have an annual gross payroll for new direct jobs projected
3 by the Department to equal or exceed Five Hundred Thousand Dollars
4 (\$500,000.00) within three (3) years of the first complete calendar
5 quarter following the start date; and

6 4. Have a number of full-time-equivalent employees subject to
7 the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes
8 and working an annual average of thirty (30) or more hours per week
9 in new direct jobs located in this state equal to or in excess of
10 eighty percent (80%) of the total number of new direct jobs.

11 D. Except as otherwise provided by subsection E of this
12 section, in order to qualify to receive incentive payments as
13 authorized by the Rural Value Added Quality Jobs Act, in addition to
14 other qualifications specified herein, an establishment shall be
15 required to pay new direct jobs an average annualized wage which
16 equals or exceeds:

17 1. One hundred ten percent (110%) of the average county wage as
18 determined by the Oklahoma State Data Center based on the most
19 recent U.S. Department of Commerce data for the county in which the
20 new direct jobs are located. For purposes of this paragraph, health
21 care premiums paid by the applicant for individuals in new direct
22 jobs shall be included in the annualized wage; or

23 2. One hundred percent (100%) of the average county wage as
24 that percentage is determined by the Oklahoma State Data Center

1 based upon the most recent U.S. Department of Commerce data for the
2 county in which the new jobs are located. For purposes of this
3 paragraph, health care premiums paid by the applicant for
4 individuals in new direct jobs shall not be included in the
5 annualized wage.

6 Provided, no average wage requirement shall exceed Twenty-five
7 Thousand Dollars (\$25,000.00), in any county. This maximum wage
8 threshold shall be indexed and modified from time to time based on
9 the latest Consumer Price Index year-to-date percent change release
10 as of the date of the annual average county wage data release from
11 the Bureau of Economic Analysis of the U.S. Department of Commerce.

12 E. 1. As used in this subsection, "opportunity zone" means one
13 or more census tracts in which, according to the most recent federal
14 decennial census, at least thirty percent (30%) of the residents
15 have annual gross household incomes from all sources below the
16 poverty guidelines established by the U.S. Department of Health and
17 Human Services. An establishment which is otherwise qualified to
18 receive incentive payments and which locates its principal business
19 activity in an opportunity zone shall not be subject to the
20 requirements of subsection D of this section.

21 2. As used in this subsection:

22 a. "negative economic event" means:

23 (1) a man-made disaster or natural disaster as
24 defined in Section 683.3 of Title 63 of the

1 Oklahoma Statutes, resulting in the loss of a
2 significant number of jobs within a particular
3 county of this state, or

4 (2) an economic circumstance in which a significant
5 number of jobs within a particular county of this
6 state have been lost due to an establishment
7 changing its structure, consolidating with
8 another establishment, closing or moving all or
9 part of its operations out of this state, and

10 b. "significant number of jobs" means Local Area
11 Unemployment Statistics (LAUS) data, as determined by
12 the Bureau of Labor Statistics, for a county which are
13 equal to or in excess of five percent (5%) of the
14 total amount of Local Area Unemployment Statistics
15 (LAUS) data for that county for the calendar year, or
16 most recent twelve-month period in which employment is
17 measured, preceding the event.

18 An establishment which is otherwise qualified to receive
19 incentive payments and which locates in a county in which a negative
20 economic event has occurred within the eighteen-month period
21 preceding the start date shall not be subject to the requirements of
22 subsection D of this section; provided, an establishment shall not
23 be eligible to receive incentive payments based upon a negative
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1 economic event with respect to jobs that are transferred from one
2 county of this state to another.

3 F. The Department shall determine if the applicant is qualified
4 to receive incentive payments.

5 G. If the applicant is determined to be qualified by the
6 Department, the Department shall conduct a cost/benefit analysis to
7 determine the estimated net direct state benefits and the net
8 benefit rate applicable for a ten-year period beginning with the
9 first complete calendar quarter following the start date and to
10 estimate the amount of gross payroll for a ten-year period beginning
11 with the first complete calendar quarter following the start date.
12 In conducting such cost/benefit analysis, the Department shall
13 consider quantitative factors, such as the anticipated level of new
14 tax revenues to the state along with the added cost to the state of
15 providing services, and such other criteria as deemed appropriate by
16 the Department. In no event shall incentive payments, cumulatively,
17 exceed the estimated net direct state benefits.

18 H. Upon approval of such an application, the Department shall
19 notify the Oklahoma Tax Commission and shall provide it with a copy
20 of the contract and the results of the cost/benefit analysis. The
21 Tax Commission may require the qualified establishment to submit
22 such additional information as may be necessary to administer the
23 provisions of the Rural Value Added Quality Jobs Act. The approved
24 establishment shall file quarterly claims with the Tax Commission

1 and shall continue to file such quarterly claims during the ten-year
2 incentive period to show its continued eligibility for incentive
3 payments, as provided in Section 6 of this act, or until it is no
4 longer qualified to receive incentive payments. The establishment
5 may be audited by the Tax Commission to verify such eligibility.
6 Once the establishment is approved, an agreement shall be deemed to
7 exist between the establishment and the State of Oklahoma, requiring
8 the continued incentive payment to be made as long as the
9 establishment retains its eligibility as defined in and established
10 pursuant to this section and Sections 3 and 6 of this act and within
11 the limitations contained in the Rural Value Added Quality Jobs Act,
12 which existed at the time of such approval.

13 I. A municipality in which an establishment eligible to receive
14 quarterly incentive payments pursuant to the provisions of this
15 section is located may file a claim with the Tax Commission for up
16 to twenty-five percent (25%) of the amount of such payment. The
17 amount of such claim shall not exceed amounts paid by the
18 municipality for direct costs of municipal infrastructure
19 improvements to provide water and sewer service to the
20 establishment. Such claim shall not be approved by the Tax
21 Commission unless the municipality and the establishment have
22 entered into a written agreement for such claims to be filed by the
23 municipality prior to submission of the application of the
24 establishment pursuant to the provisions of this section. If such

1 claim is approved, the amount of the payment to the establishment
2 made pursuant to the provisions of Section 6 of this act shall be
3 reduced by the amount of the approved claim by the municipality and
4 the Tax Commission shall issue a warrant to the municipality in the
5 amount of the approved claim in the same manner as warrants are
6 issued to qualifying establishments.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3955 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 There is hereby created within the State Treasury a special fund
11 for the Oklahoma Tax Commission to be designated the "Rural Value
12 Added Quality Jobs Incentive Payment Fund". The Oklahoma Tax
13 Commission is hereby authorized and directed to withhold a portion
14 of the taxes levied and collected pursuant to Section 2355 of Title
15 68 of the Oklahoma Statutes for deposit into the fund. The amount
16 deposited shall equal the sum of an amount determined by multiplying
17 the net benefit rate provided by the Oklahoma Department of Commerce
18 by the gross payroll as determined pursuant to the provisions of
19 subsection A of Section 6 of this act. All of the amounts deposited
20 in such fund shall be used and expended by the Tax Commission solely
21 for the purposes and in the amounts authorized by the Rural Value
22 Added Quality Jobs Act. The liability of the State of Oklahoma to
23 make the incentive payments under this act shall be limited to the
24 balance contained in the fund created by this section.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3956 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. As soon as practicable after the end of the first complete
5 calendar quarter following the start date, the establishment shall
6 file a claim for the payment with the Oklahoma Tax Commission and
7 shall specify the actual number and gross payroll of new direct jobs
8 for the establishment for the calendar quarter. The Tax Commission
9 shall verify the actual gross payroll for new direct jobs for the
10 establishment for such calendar quarter. If the Tax Commission is
11 not able to provide such verification utilizing all available
12 resources, the Tax Commission may request such additional
13 information from the establishment as may be necessary or may
14 request the establishment to revise its claim. An establishment may
15 file for an extension of the initial filing date with the Oklahoma
16 Department of Commerce. Any such extension shall be based solely
17 upon an extraordinary adverse business circumstance which prevented
18 the establishment from hiring the new direct jobs as projected. If
19 an establishment fails to file claims as required by this section,
20 it shall forfeit the right to receive any incentive payments after
21 three (3) years from the start date.

22 B. If the actual verified gross payroll for four (4)
23 consecutive calendar quarters does not equal or exceed the
24 applicable total required by Section 4 of this act within three (3)

1 years of the start date or does not equal or exceed the applicable
2 total required by Section 4 of this act at any other time during the
3 ten-year period after the start date the incentive payments shall
4 not be made and shall not be resumed until such time as the actual
5 verified gross payroll equals or exceeds the amounts specified in
6 Section 4 of this act.

7 C. If the average annualized wage required for an establishment
8 does not equal or exceed the amount specified in paragraph 1 or 2 of
9 subsection D of Section 4 of this act during any calendar quarter,
10 the incentive payments shall not be made and shall not be resumed
11 until such time as such requirements are met.

12 D. In no event shall incentive payments, cumulatively, exceed
13 the estimated net direct state benefits.

14 E. An establishment that has qualified pursuant to Section 4 of
15 this act may receive payments only in accordance with the provisions
16 of the law under which it initially applied and was approved. If an
17 establishment that is receiving incentive payments expands, it may
18 apply for additional incentive payments based on the gross payroll
19 anticipated from the expansion only, pursuant to Section 4 of this
20 act. Provided, an establishment which has suffered an extraordinary
21 adverse business circumstance, as certified by the Incentive
22 Approval Committee, may be allowed to voluntarily withdraw from the
23 Rural Value Added Quality Jobs Act, repay to the Tax Commission the
24 total amount of incentive payments received pursuant to the

1 provisions of this section, plus interest at the rate specified in
2 Section 727.1 of Title 12 of the Oklahoma Statutes, and reapply to
3 the Department for a new incentive contract if the establishment
4 qualifies pursuant to the provisions of the Rural Value Added
5 Quality Jobs Act. Any funds received by the Tax Commission pursuant
6 to the provisions of this subsection shall be apportioned in the
7 manner that income tax revenues are apportioned.

8 F. An establishment that is receiving incentive payments may
9 not apply for additional incentive payments for any new projects
10 until twelve (12) quarters after receipt of the first incentive
11 payment, or until the establishment's actual verified gross payroll
12 for new direct jobs equals or exceeds Five Hundred Thousand Dollars
13 (\$500,000.00) during any four-consecutive-calendar-quarter period,
14 whichever comes first. After meeting the requirements of this
15 subsection, an establishment may apply for additional incentive
16 payments based upon the gross payroll anticipated from an expansion
17 only.

18 G. As soon as practicable after verification of the actual
19 gross payroll as required by this section and except as otherwise
20 provided by subsection I of Section 4 of this act, the Tax
21 Commission shall issue a warrant to the establishment in the amount
22 of the net benefit rate multiplied by the actual gross payroll as
23 determined pursuant to subsection A of this section for the calendar
24 quarter.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3957 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Notwithstanding any other provision of law, if a qualified
5 establishment receives an incentive payment pursuant to the
6 provisions of the Rural Value Added Quality Jobs Act, neither the
7 qualified establishment nor its contractors or subcontractors shall
8 be eligible to receive the credits or exemptions provided for in the
9 following provisions of law in connection with the activity for
10 which the incentive payment was received:

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

13 2. Paragraph 7 of Section 1359 of Title 68 of the Oklahoma
14 Statutes;

15 3. Section 2357.4 of Title 68 of the Oklahoma Statutes; except
16 as provided in subsection B of this section;

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

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

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

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

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

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

23 10. Section 625.1 of Title 36 of the Oklahoma Statutes;

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

3 12. Section 2357.13 of Title 68 of the Oklahoma Statutes;

4 13. Section 4201 of Title 68 of the Oklahoma Statutes; or

5 14. Section 3601 of Title 68 of the Oklahoma Statutes.

6 B. Any establishment which has qualified to receive quarterly
7 incentive payments pursuant to subsection B of Section 4 of this act
8 for a ten-year period with a project start date after January 1,
9 2013, shall be eligible to receive the credit provided for in
10 Section 2357.4 of Title 68 of the Oklahoma Statutes if such
11 establishment:

12 1. Qualifies for the credit allowed pursuant to paragraph 1 of
13 subsection B of Section 2357.4 of Title 68 of the Oklahoma Statutes
14 based on an investment made after January 1, 2013;

15 2. Pays an average annualized wage which equals or exceeds the
16 average state wage as determined by the Oklahoma State Data Center
17 based on the most recent U.S. Department of Commerce data; and

18 3. Obtains a determination letter from the Oklahoma Department
19 of Commerce that the business activity of the entity will result in
20 a positive net benefit rate.

21 C. For purposes of the exception provided for in this section:

22 1. "Estimated direct state benefits" has the meaning set out in
23 paragraph 4 of subsection A of Section 3 of this act;

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1 2. "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
4 generated from ancillary support jobs directly related to the
5 primary business;

6 3. "Estimated direct state costs" has the meaning set out in
7 paragraph 5 of subsection A of Section 3 of this act; and

8 4. "Estimated indirect state costs" means the costs projected
9 by the Oklahoma Department of Commerce to accrue to the state as a
10 result of new indirect jobs. Such costs shall include, but not be
11 limited to, costs enumerated in paragraph 3 of this subsection.

12 D. Any establishment which has qualified to receive quarterly
13 incentive payments pursuant to subsection B of Section 4 of this act
14 for a ten-year period with a project start date after January 1,
15 2013, shall be eligible to receive the credit provided for in
16 Section 2357.4 of Title 68 of the Oklahoma Statutes pursuant to the
17 provisions of this section if such establishment obtains a
18 determination letter from the Oklahoma Department of Commerce that
19 the business activity of the entity will result in a positive net
20 benefit rate, to be computed by the Oklahoma Department of Commerce
21 using a methodology which provides for the analysis of estimated
22 direct state benefits, estimated indirect state benefits, estimated
23 direct state costs and estimated indirect state costs. The Oklahoma
24 Department of Commerce shall use such information as it determines

1 to be relevant for the analysis required by this subsection
2 including, but not limited to, the type of business activity in
3 which the entity is engaged or will be engaged, amount of capital
4 investment, type of assets acquired or utilized by the business
5 entity, economic impact of the business activity within the relevant
6 geographic region and such other factors as the Department
7 determines to be relevant. The Oklahoma Department of Commerce may
8 use information regarding the business entity alone or in
9 conjunction with relevant information regarding other business
10 activity in a geographically relevant area surrounding the principal
11 business location of the primary business entity in order to perform
12 the computation of the net benefit rate. If the result of the
13 analysis is a positive net benefit rate, the establishment shall be
14 allowed to qualify to receive quarterly incentive payments pursuant
15 to subsection B of Section 3604 of Title 68 of the Oklahoma Statutes
16 for a ten-year period and shall be eligible to receive the credit
17 provided for in Section 2357.4 of Title 68 of the Oklahoma Statutes.
18 The Oklahoma Department of Commerce shall transmit a determination
19 letter to the authorized representative of the establishment and
20 shall also transmit a copy of the determination letter to the
21 Oklahoma Tax Commission, regardless of whether the result is a
22 positive or negative net benefit rate.

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1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3958 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 this
7 act.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3959 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 or other instrument or providing any other
13 information pursuant to the provisions of this act who willfully
14 makes a false or fraudulent application, claim, report, return,
15 statement, invoice or other instrument or who willfully provides any
16 false or fraudulent information, or any person who willfully aids or
17 abets another in making such false or fraudulent application, claim,
18 report, return, statement, invoice or other instrument or who
19 willfully aids or abets another in providing any false or fraudulent
20 information, upon conviction, shall be guilty of a felony punishable
21 by the imposition of a fine of not less than One Thousand Dollars
22 (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00),
23 or imprisonment in the custody of the Department of Corrections for
24 not less than two (2) years and not more than five (5) years, or by

1 both such fine and imprisonment. Any person convicted of a
2 violation of this section shall be liable for the repayment of all
3 incentive payments which were paid to the establishment. Interest
4 shall be due on such payments at the rate of ten percent (10%) per
5 annum.

6 SECTION 10. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3960 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 The Oklahoma Department of Commerce shall prepare triennially a
10 report which shall include, but not be limited to, documentation of
11 the new direct jobs created under the Rural Value Added Quality Jobs
12 Act and a fiscal analysis of the costs and benefits of the program
13 to the state. The report shall be submitted to the President Pro
14 Tempore of the Senate, the Speaker of the House of Representatives
15 and the Governor of this state no later than March 1, 2016, and
16 every three (3) years thereafter. The report may be used for the
17 purpose of determining whether to continue or sunset the Rural Value
18 Added Quality Jobs Act.

19 SECTION 11. This act shall become effective January 1, 2013.

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