

1 STATE OF OKLAHOMA

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

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 2980

6 By: Dank

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; enacting the
9 Preserving Oklahoma's Strategic Industries Incentive
10 Act; stating legislative intent; defining terms;
11 authorizing quarterly incentive payments to certain
12 establishments; providing method for computation of
13 incentive payment amount; prescribing application
14 procedures; requiring Department of Commerce to make
15 certain determinations; prescribing procedures
16 related to approval of application and for payment of
17 incentive amounts; requiring reports to be filed with
18 the Oklahoma Department of Commerce; imposing time
19 limit on filing of certain claims; requiring payroll
20 verification; authorizing additional information
21 requests; prescribing limit on duration of incentives
22 and prescribing procedures related thereto; imposing
23 duties on Oklahoma Tax Commission; providing for
24 payment of incentives based on certain factors;
creating the Preserving Oklahoma's Strategic
Industries Incentive Payment Fund; providing for
sources of revenue; providing for expenditures from
fund; providing for limit on liability based upon
fund balance; requiring promulgation of rules by the
Oklahoma Department of Commerce and the Oklahoma Tax
Commission; prescribing penalties for false
applications and false statements in related
documents; providing for imposition of fines
requiring repayment of incentive payments under
certain conditions; providing for accrual of
interest; prohibiting eligibility for certain credits
or exemptions based upon receipt of incentive
payments; requiring Oklahoma Department of Commerce
to prepare report; requiring period preparation and
submission of report; providing for codification;

1 providing an effective date; and declaring an
2 emergency.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4501 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as the "Preserving
9 Oklahoma's Strategic Industries Incentive Act".

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 4502 of Title 68, unless there
12 is created a duplication in numbering, reads as follows:

13 It is the intent of the Legislature that:

14 1. The State of Oklahoma provide a bridge incentive to preserve
15 Oklahoma's strategic industries through distressful economic periods
16 through a policy of rewarding well-managed businesses that provide
17 job growth within wealth-generating industries which have a period
18 of underperformance over the previous three (3) calendar years,
19 combined;

20 2. The Oklahoma Department of Commerce and the Oklahoma Tax
21 Commission implement the provisions of this act and exercise all
22 powers as authorized in this act. The exercise of powers conferred
23 by this act shall be deemed and held to be the performance of
24 essential public purposes; and

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

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4503 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Preserving Oklahoma's Strategic Industries
10 Incentive Act:

11 1. "Basic industry" means:

12 a. a basic industry as defined under the 21st Century
13 Quality Jobs Incentive Act in paragraph 1 of Section
14 3913 of Title 68 of the Oklahoma Statutes, and

15 b. an industry that has had a three-year period of
16 underperformance as defined by shift share analysis,
17 which is the actual growth compared to the expected
18 growth of the industry, determined by the Oklahoma
19 Department of Commerce using Economic Modeling
20 Specialist software or other appropriate techniques,
21 and

22 c. an industry that has had net employment loss over the
23 same three-year period in the State of Oklahoma, and

24

- 1 d. if an industry has an out-of-state sales requirement
2 as defined by subparagraph a of paragraph 1 of Section
3 3913 of Title 68 of the Oklahoma Statutes, that
4 requirement will be reduced to twenty-five percent
5 (25%) during the initial benefit rate period, and
6 e. if an industry has an out-of-state sales requirement
7 as defined by subparagraph a of paragraph 1 of Section
8 3913 of Title 68 of the Oklahoma Statutes, that
9 requirement must meet at least fifty percent (50%) in
10 addition to ten (10) direct new jobs for the
11 fulfillment net benefit rate to be achieved;

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

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

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

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

- 4 a. the costs of education of new state resident children,
- 5 b. the costs of public health, public safety and
6 transportation services to be provided to new state
7 residents,
- 8 c. the costs of other state services to be provided to
9 new state residents, and
- 10 d. the costs of other state services;

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

16 7. "Estimated net direct state benefits" means the estimated
17 direct state benefits less the estimated direct state costs;

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

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

1 10. "Gross taxable payroll" means wages, as defined in Section
2 2385.1 of Title 68 of the Oklahoma Statutes, for no more than fifty
3 (50) new direct jobs;

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

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

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

10 12. "Fulfillment net benefit rate" means the estimated net
11 direct and indirect state benefits computed as:

12 a. a percentage of gross payroll after the completion of
13 the first twelve (12) quarters, or

14 b. until the establishment reaches ten (10) new direct
15 jobs and also meets the threshold for out-of-state
16 sales, whichever occurs first, provided:

17 (1) the fulfillment net benefit rate may be variable
18 and shall not exceed ten percent (10%), and

19 (2) in no event shall incentive payments,
20 cumulatively, exceed the estimated net direct and
21 indirect state benefits; and

22 13. "New direct job" means full-time employment which did not
23 exist in this state prior to the date of approval, by the Oklahoma
24 Department of Commerce, of an application made pursuant to this act.

1 A job shall be deemed to exist in this state prior to approval of an
2 application if the activities and functions for which the particular
3 job exists have been ongoing at anytime within six (6) months prior
4 to such approval.

5 a. the fulfillment net benefit rate will be applied to a
6 maximum of fifty (50) new direct jobs and shall only
7 be applied after ten (10) new direct jobs have been
8 created and the out-of-state sales threshold is met.

9 b. it will be the responsibility of the establishment to
10 provide documentation satisfactory to the Oklahoma
11 Department of Commerce regarding the out-of-state
12 sales of the establishment.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 4504 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 A. An establishment which meets the qualifications specified in
17 the Preserving Oklahoma's Strategic Industries Incentive Act may
18 receive quarterly incentive payments for a five-year period from the
19 Oklahoma Tax Commission pursuant to the provisions of this act, as
20 verified by the Tax Commission, in an amount equal to:

21 1. The gross payroll multiplied by the initial net benefit rate
22 until such time as the establishment creates ten (10) new direct
23 jobs; or

24

1 2. The gross payroll multiplied by the fulfillment net benefit
2 rate after such time as the establishment created and maintains ten
3 (10) new direct jobs, and reaches the out-of-state sales requirement
4 for the respective industry.

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

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

16 1. Be engaged in a basic industry as defined in the Preserving
17 Oklahoma's Strategic Industries Act;

18 2. Will hire at least ten (10) and no more than fifty (50)
19 full-time employees in this state within twelve (12) quarters of the
20 date of application;

21 3. Will pay the individuals it employs in new direct jobs one
22 hundred ten percent (110%) of the average county wage of small
23 employers located in that county as that percentage is determined by
24 the Oklahoma State Data Center based upon the most recent wage and

1 employment data from the Oklahoma Employment Security Commission for
2 the county in which the new direct jobs are located. For purposes
3 of this subparagraph, health care premiums paid by the applicant for
4 individuals in new direct jobs shall not be included in the
5 annualized wage;

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

12 5. Is not qualified for approval of an application for
13 incentive payments under the Small Employer Quality Jobs Incentive
14 Act, the Saving Quality Jobs Act, the Former Military Facility
15 Development Act, the Oklahoma Quality Jobs Program Act or the 21st
16 Century Quality Jobs Incentive 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 five-year period. The
24 Tax Commission may require the qualified establishment to submit

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

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4505 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

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

1 Tax Commission is not able to provide such verification utilizing
2 all available resources, the Tax Commission may request additional
3 information from the establishment as may be necessary or may
4 request the establishment to revise its reports.

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

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

13 a. during the initial twelve (12) quarters of the
14 contract or until the establishment creates ten (10)
15 new direct jobs, paid the individuals it employed in
16 new direct jobs an average annualized wage that
17 exceeded the requirements of paragraph 3 of subsection
18 C of Section 4 of this act, or

19 b. after the establishment created ten (10) and no more
20 than fifty (50) new direct jobs:

21 (1) paid the individuals it employed in new direct
22 jobs an average annualized wage which equaled or
23 exceeded the requirements of paragraph 3 of
24 subsection C of Section 4 of this act, and

1 (2) created and/or maintained the minimum number of
2 new direct jobs as specified in the Preserving
3 Oklahoma's Strategic Industries Act;

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

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

15 b. the fulfillment net benefit rate multiplied by the
16 amount of gross taxable payroll of new direct jobs
17 actually paid by the establishment after it creates or
18 maintains ten (10) new direct jobs provided that the
19 Oklahoma Tax Commission has received notification from
20 the Oklahoma Department of Commerce that the
21 establishment has provided satisfactory documentation
22 for the out-of-state sales requirement.

23 B. Except as provided in subsection C of this section, the
24 quarterly incentive payment provided for in subsection A of this

1 section shall be allowed in each of the nineteen (19) subsequent
2 calendar quarters.

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

8 2. An establishment which at any time during the nineteen (19)
9 subsequent calendar quarters does not meet the requirements of
10 paragraph 2 of subsection A of this section shall be ineligible to
11 receive an incentive payment during the calendar quarter in which
12 such requirements are not met.

13 3. An establishment which has met the requirements of paragraph
14 2 of subsection A of this section within twelve (12) quarters of the
15 date of its application, but which at any time during the subsequent
16 eight (8) quarters fails to meet the requirements of paragraph 2 of
17 subsection A of this section in four (4) consecutive quarters, shall
18 be ineligible to receive any further incentive payments pursuant to
19 its application and approval.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 4506 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created within the State Treasury a special fund
24 for the Oklahoma Tax Commission to be designated the "Preserving

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

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 4507 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 The Oklahoma Department of Commerce and the Oklahoma Tax
18 Commission shall promulgate rules necessary to implement their
19 respective duties and responsibilities under the provisions of the
20 Preserving Oklahoma's Strategic Industries Incentive Act.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 4508 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

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

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4509 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 Notwithstanding any other provision of law, if a qualified
21 establishment receives an incentive payment pursuant to the
22 provisions of the Preserving Oklahoma's Strategic Industries
23 Incentive Act, neither the qualified establishment nor its
24 contractors or subcontractors shall be eligible to receive the

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

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

6 2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma
7 Statutes;

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

9 4. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

10 5. Section 2357.22 of Title 68 of the Oklahoma Statutes;

11 6. Section 2357.31 of Title 68 of the Oklahoma Statutes;

12 7. Section 54003 of Title 68 of the Oklahoma Statutes;

13 8. Section 54006 of Title 68 of the Oklahoma Statutes;

14 9. Section 625.1 of Title 36 of the Oklahoma Statutes; or

15 10. Subsections C and D of Section 2357.59 of Title 68 of the
16 Oklahoma Statutes.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4510 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 The Oklahoma Department of Commerce shall prepare a report which
21 shall include, but not be limited to, documentation of the new
22 direct jobs created under this act and a fiscal analysis of the
23 costs and benefits of the act to the state. The report shall be
24 submitted to the President Pro Tempore of the Senate, the Speaker of

1 the House of Representatives and the Governor no later than January
2 1, 2014, and every three (3) years thereafter. The report may be
3 used for the purpose of determining whether to continue or sunset
4 the Preserving Oklahoma's Strategic Industries Incentive Act.

5 SECTION 11. This act shall become effective July 1, 2012.

6 SECTION 12. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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