

1 ENGROSSED HOUSE
2 BILL NO. 2980

By: Dank, Sherrer and Hoskin of
the House

3 and

4 Mazzei of the Senate
5
6

7 An Act relating to revenue and taxation; enacting the
8 Preserving Oklahoma's Strategic Industries Incentive
9 Act; stating legislative intent; defining terms;
10 authorizing quarterly incentive payments to certain
11 establishments; providing method for computation of
12 incentive payment amount; prescribing application
13 procedures; requiring Department of Commerce to make
14 certain determinations; prescribing procedures
15 related to approval of application and for payment of
16 incentive amounts; requiring reports to be filed with
17 the Oklahoma Tax Commission; imposing time limit on
18 filing of certain claims; requiring payroll
19 verification; authorizing additional information
20 requests; prescribing limit on duration of incentives
21 and prescribing procedures related thereto; imposing
22 duties on Oklahoma Tax Commission; providing for
23 payment of incentives based on certain factors;
24 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 for preparation
and submission of report; providing for codification;
providing an effective date; and declaring an
emergency.

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

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

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

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

10 It is the intent of the Legislature that:

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

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

22 3. Nothing herein shall be construed to constitute a guarantee
23 or assumption by the State of Oklahoma of any debt of any
24 individual, company, corporation or association nor to authorize the

1 credit of the State of Oklahoma to be given, pledged or loaned to
2 any individual, company, corporation or association.

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

6 As used in the Preserving Oklahoma's Strategic Industries
7 Incentive Act:

8 1. "Basic industry" means:

- 9 a. a basic industry as defined under the 21st Century
10 Quality Jobs Incentive Act in paragraph 1 of Section
11 3913 of Title 68 of the Oklahoma Statutes, and
- 12 b. an industry that has had a three-year period of
13 underperformance as defined by shift share analysis,
14 which is the actual growth compared to the expected
15 growth of the industry, determined by the Oklahoma
16 Department of Commerce using Economic Modeling
17 Specialist software or other appropriate techniques,
18 and
- 19 c. an industry that has had net employment loss over the
20 same three-year period in the State of Oklahoma, and
- 21 d. if an industry has an out-of-state sales requirement
22 as defined by subparagraph a of paragraph 1 of Section
23 3913 of Title 68 of the Oklahoma Statutes, that

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

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

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

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

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

23 a. the costs of education of new state resident children,
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1 b. the costs of public health, public safety and
2 transportation services to be provided to new state
3 residents,

4 c. the costs of other state services to be provided to
5 new state residents, and

6 d. the costs of other state services;

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

12 7. "Estimated net direct state benefits" means the estimated
13 direct state benefits less the estimated direct state costs;

14 8. "Estimated net direct and indirect state benefits" means the
15 estimated direct and indirect state benefits less the estimated
16 direct and indirect state costs;

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

21 10. "Gross taxable payroll" means wages, as defined in Section
22 2385.1 of Title 68 of the Oklahoma Statutes, for no more than fifty
23 new direct jobs;

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

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

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

- 9 a. a percentage of gross payroll after the completion of
10 the first twelve (12) quarters, or
- 11 b. until the establishment reaches ten new direct jobs
12 and also meets the threshold for out-of-state sales,
13 whichever occurs first, provided:

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

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

19 13. "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 a. the fulfillment net benefit rate will be applied to a
4 maximum of fifty new direct jobs and shall only be
5 applied after ten new direct jobs have been created
6 and the out-of-state sales threshold is met.

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

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

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

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

21 2. The gross payroll multiplied by the fulfillment net benefit
22 rate after such time as the establishment creates and maintains ten
23 new direct jobs, and reaches the out-of-state sales requirement for
24 the respective industry.

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

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

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

14 2. Will hire at least ten and no more than fifty full-time
15 employees in this state within twelve (12) quarters of the date of
16 application;

17 3. Will pay the individuals it employs in new direct jobs one
18 hundred ten percent (110%) of the average county wage of small
19 employers located in that county as that percentage is determined by
20 the Oklahoma State Data Center based upon the most recent wage and
21 employment data from the Oklahoma Employment Security Commission for
22 the county in which the new direct jobs are located. For purposes
23 of this subparagraph, health care premiums paid by the applicant for
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1 individuals in new direct jobs shall not be included in the
2 annualized wage;

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

9 5. Is not qualified for approval of an application for
10 incentive payments under the Small Employer Quality Jobs Incentive
11 Act, the Saving Quality Jobs Act, the Former Military Facility
12 Development Act, the Oklahoma Quality Jobs Program Act or the 21st
13 Century Quality Jobs Incentive Act.

14 D. The Oklahoma Department of Commerce shall determine if an
15 applicant is qualified to receive the incentive payment. Upon
16 qualifying the applicant, the Department shall notify the Tax
17 Commission and shall provide it with a copy of the contract and
18 approval which shall provide the number of persons employed by the
19 applicant upon the date of approval and the maximum total incentives
20 which may be paid to the applicant during the five-year period. The
21 Tax Commission may require the qualified establishment to submit
22 additional information as may be necessary to administer the
23 provisions of this act. The approved establishment shall report to
24 the Tax Commission quarterly to show its continued eligibility for

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

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

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

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

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

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

17 b. after the establishment created ten and no more than
18 fifty new direct jobs:

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

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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 new direct jobs, whichever
14 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 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.

10 Passed the House of Representatives the 14th day of March, 2012.

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13 _____
Presiding Officer of the House of
14 Representatives

15 Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate

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