

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2980

By: Dank of the House

and

Mazzei of the Senate

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10 COMMITTEE SUBSTITUTE

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

1 requiring repayment of incentive payments under
2 certain conditions; providing for accrual of
3 interest; prohibiting eligibility for certain credits
4 or exemptions based upon receipt of incentive
5 payments; requiring Oklahoma Department of Commerce
6 to prepare report; requiring period preparation and
7 submission of report; providing for codification;
8 providing an effective date; and declaring an
9 emergency.

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

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

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

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

19 It is the intent of the Legislature that:

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

1 2. The Oklahoma Department of Commerce and the Oklahoma Tax
2 Commission implement the provisions of this act and exercise all
3 powers as authorized in this act. The exercise of powers conferred
4 by this act shall be deemed and held to be the performance of
5 essential public purposes; and

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

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

14 As used in the Preserving Oklahoma's Strategic Industries
15 Incentive Act:

- 16 1. "Basic industry" means:
- 17 a. a basic industry as defined under the 21st Century
18 Quality Jobs Incentive Act in paragraph 1 of Section
19 3913 of Title 68 of the Oklahoma Statutes, and
 - 20 b. an industry that has had a three-year period of
21 underperformance as defined by shift share analysis,
22 which is the actual growth compared to the expected
23 growth of the industry, determined by the Oklahoma

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~~Strike thru~~ language denotes deletion from present Statutes.

1 Department of Commerce using Economic Modeling
2 Specialist software or other appropriate techniques,
3 and

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

6 d. 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 will be reduced to twenty-five percent
10 (25%) during the initial benefit rate period, and

11 e. if an industry has an out-of-state sales requirement
12 as defined by subparagraph a of paragraph 1 of Section
13 3913 of Title 68 of the Oklahoma Statutes, that
14 requirement must meet at least fifty percent (50%) in
15 addition to ten (10) direct new jobs for the
16 fulfillment net benefit rate to be achieved;

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

20 3. "Estimated direct state benefits" means the tax revenues
21 projected by the Oklahoma Department of Commerce to accrue to the
22 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
4 generated from ancillary support jobs directly related to the
5 establishment;

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

- 9 a. the costs of education of new state resident children,
- 10 b. the costs of public health, public safety and
11 transportation services to be provided to new state
12 residents,
- 13 c. the costs of other state services to be provided to
14 new state residents, and
- 15 d. the costs of other state services;

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

21 7. "Estimated net direct state benefits" means the estimated
22 direct state benefits less the estimated direct state costs;

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1 8. "Estimated net direct and indirect state benefits" means the
2 estimated direct and indirect state benefits less the estimated
3 direct and indirect state costs;

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

8 10. "Gross taxable payroll" means wages, as defined in Section
9 2385.1 of Title 68 of the Oklahoma Statutes, for no more than fifty
10 (50) new direct jobs;

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

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

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

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

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

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

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- 1 (1) the fulfillment net benefit rate may be variable
2 and shall not exceed ten percent (10%), and
3 (2) in no event shall incentive payments,
4 cumulatively, exceed the estimated net direct and
5 indirect state benefits; and

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

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

17 b. it will be the responsibility of the establishment to
18 provide documentation satisfactory to the Oklahoma
19 Department of Commerce regarding the out-of-state
20 sales of the establishment.

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

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

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

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

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. The establishment may apply for an
18 effective date for a project, which shall not be more than twelve
19 (12) months from the date the application is submitted to the
20 Department.

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

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- 1 1. Be engaged in a basic industry as defined in the Preserving
2 Oklahoma's Strategic Industries Act;
- 3 2. Will hire at least ten (10) and no more than fifty (50)
4 full-time employees in this state within twelve (12) quarters of the
5 date of application;
- 6 3. Will pay the individuals it employs in new direct jobs one
7 hundred ten percent (110%) of the average county wage of small
8 employers located in that county as that percentage is determined by
9 the Oklahoma State Data Center based upon the most recent wage and
10 employment data from the Oklahoma Employment Security Commission for
11 the county in which the new direct jobs are located. For purposes
12 of this subparagraph, health care premiums paid by the applicant for
13 individuals in new direct jobs shall not be included in the
14 annualized wage;
- 15 4. Has a basic health benefit plan which, as determined by the
16 Department, meets the elements established under divisions (1)
17 through (7) of subparagraph b of paragraph 1 of subsection A of
18 Section 3603 of Title 68 of the Oklahoma Statutes and which will be
19 offered to individuals within twelve (12) months of employment in a
20 new direct job; or
- 21 5. Is not qualified for approval of an application for
22 incentive payments under the Small Employer Quality Jobs Incentive
23 Act, the Saving Quality Jobs Act, the Former Military Facility

1 Development Act, the Oklahoma Quality Jobs Program Act or the 21st
2 Century Quality Jobs Incentive 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 contract 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 five-year period. The
10 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 five-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.

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

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

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

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

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

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

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

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

18 3. Upon determining that an establishment has met the
19 requirements of paragraph 2 of this subsection for the initial
20 calendar quarter of the incentive period, the Tax Commission shall
21 issue a warrant to the establishment in an amount which shall be
22 equal to either:

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1 a. the initial net benefit rate multiplied by the amount
2 of gross taxable payroll of new direct jobs actually
3 paid by the establishment during the initial twelve
4 (12) quarters of the contract or until the
5 establishment reaches ten (10) new direct jobs,
6 whichever comes first, or

7 b. the fulfillment net benefit rate multiplied by the
8 amount of gross taxable payroll of new direct jobs
9 actually paid by the establishment after it creates or
10 maintains ten (10) new direct jobs provided that the
11 Oklahoma Tax Commission has received notification from
12 the Oklahoma Department of Commerce that the
13 establishment has provided satisfactory documentation
14 for the out-of-state sales requirement.

15 B. Except as provided in subsection C of this section, the
16 quarterly incentive payment provided for in subsection A of this
17 section shall be allowed in each of the nineteen (19) subsequent
18 calendar quarters.

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

1 2. An establishment which at any time during the nineteen (19)
2 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 3. An establishment which has met the requirements of paragraph
7 2 of subsection A of this section within twelve (12) quarters of the
8 date of its application, but which at any time during the subsequent
9 eight (8) quarters fails to meet the requirements of paragraph 2 of
10 subsection A of this section in four (4) consecutive quarters, shall
11 be ineligible to receive any further incentive payments pursuant to
12 its application and approval.

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

16 There is hereby created within the State Treasury a special fund
17 for the Oklahoma Tax Commission to be designated the "Preserving
18 Oklahoma's Strategic Industries Incentive Payment Fund". The Tax
19 Commission is hereby authorized and directed to withhold a portion
20 of the taxes levied and collected pursuant to Section 2355 of Title
21 68 of the Oklahoma Statutes for deposit into the fund. The amount
22 deposited shall equal the sum estimated by the Tax Commission to be
23 sufficient to pay incentive payments claimed pursuant to the

1 provisions of Section 4 of this act. All of the amounts deposited
2 in such fund shall be used and expended by the Tax Commission solely
3 for the purposes and in the amounts authorized by the Preserving
4 Oklahoma's Strategic Industries Act. The liability of the State of
5 Oklahoma to make incentive payments under the Preserving Oklahoma's
6 Strategic Industries Incentive Act shall be limited to the balance
7 contained in the fund created by this section.

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

11 The Oklahoma Department of Commerce and the Oklahoma Tax
12 Commission shall promulgate rules necessary to implement their
13 respective duties and responsibilities under the provisions of the
14 Preserving Oklahoma's Strategic Industries Incentive Act.

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

18 Any person making an application, claim for payment or any
19 report, return, statement, invoice, or other instrument or providing
20 any other information pursuant to the provisions of this act who
21 willfully makes a false or fraudulent application, claim, report,
22 return, statement, invoice, or other instrument, or who willfully
23 provides any false or fraudulent information, or any person who

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

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

14 Notwithstanding any other provision of law, if a qualified
15 establishment receives an incentive payment pursuant to the
16 provisions of the Preserving Oklahoma's Strategic Industries
17 Incentive Act, neither the qualified establishment nor its
18 contractors or subcontractors shall be eligible to receive the
19 credits or exemptions provided for in the following provisions of
20 law in connection with the activity for which the incentive payment
21 was received:

22 1. Paragraphs 16 and 17 of Section 1357 of Title 68 of the
23 Oklahoma Statutes;

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- 1 2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma
2 Statutes;
- 3 3. Section 2357.4 of Title 68 of the Oklahoma Statutes;
- 4 4. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
- 5 5. Section 2357.22 of Title 68 of the Oklahoma Statutes;
- 6 6. Section 2357.31 of Title 68 of the Oklahoma Statutes;
- 7 7. Section 54003 of Title 68 of the Oklahoma Statutes;
- 8 8. Section 54006 of Title 68 of the Oklahoma Statutes;
- 9 9. Section 625.1 of Title 36 of the Oklahoma Statutes; or
- 10 10. Subsections C and D of Section 2357.59 of Title 68 of the
11 Oklahoma Statutes.

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

15 The Oklahoma Department of Commerce shall prepare a report which
16 shall include, but not be limited to, documentation of the new
17 direct jobs created under this act and a fiscal analysis of the
18 costs and benefits of the act to the state. The report shall be
19 submitted to the President Pro Tempore of the Senate, the Speaker of
20 the House of Representatives and the Governor no later than January
21 1, 2014, and every three (3) years thereafter. The report may be
22 used for the purpose of determining whether to continue or sunset
23 the Preserving Oklahoma's Strategic Industries Incentive Act.

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

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

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7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
8 03/01/2012 - DO PASS, As Amended and Coauthored.

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