

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2326

By: Lockhart

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; creating the
8 Rural Value Added Quality Jobs Act; stating
9 legislative intent; defining terms; creating
10 Incentive Approval Committee; specifying membership
11 and duties of committee; providing for quarterly
12 incentive payments to certain establishments;
13 specifying amount of payments; specifying application
14 procedures; providing eligibility requirements;
15 requiring Oklahoma Department of Commerce determine
16 applicant eligibility; requiring cost benefit
17 analysis; limiting eligibility based on result of
18 analysis; allowing Oklahoma Tax Commission to require
19 additional information; allowing Tax Commission to
20 audit to verify eligibility; providing that agreement
21 exists under certain conditions; allowing
22 municipalities to receive portion of payments under
23 certain circumstances; requiring Tax Commission
24 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
letter; requiring Department of Commerce and Tax
Commission to promulgate certain rules; prohibiting

1 certain act; providing punishment; requiring
2 Department of Commerce to prepare certain report;
3 providing for codification; and providing an
4 effective date.

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

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

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

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

15 It is the intent of the Legislature that:

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

20 2. The amount of incentives provided pursuant to this act in
21 connection with a particular establishment:

22 a. be directly related to the jobs created as a result of
23 the establishment locating in rural areas of the State
24 of Oklahoma, and

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

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

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

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

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

19 1. "Basic industry" means those activities:

20 a. defined or classified in the NAICS Manual under
21 Section Nos. 11, 22, 23, 31, 32, 33, 42, 44, 45, 48,
22 49, 51, 52, 53, 54, 55, 56, 61, 62, 71, 72, 81 and 92,
23 and

1 b. related to extraction of crude petroleum and natural
2 gas defined or classified in the NAICS Manual under
3 Industry Group No. 2111, subject to the limitations
4 provided in subsection B of this section;

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

7 a. beneficial ownership of more than fifty percent (50%)
8 in value and more than fifty percent (50%) in voting
9 power of the outstanding equity securities of the
10 transferred establishment, or

11 b. more than fifty percent (50%) in value of the assets
12 of an establishment.

13 A transferor shall be treated as related to a transferee if more
14 than fifty percent (50%) of the voting interests of the transferor
15 and transferee are owned, directly or indirectly, by the other or
16 are owned, directly or indirectly, by the same person or persons,
17 unless such transferred establishment has an outstanding class of
18 equity securities registered under Sections 12(b) or 15(d) of the
19 Securities Exchange Act of 1934, as amended, in which event the
20 transferor and transferee will be treated as unrelated; provided, an
21 establishment applying for the Rural Value Added Quality Jobs Act as
22 a result of a change of control event is required to apply within
23 one hundred eighty (180) days of the change in control event to
24 qualify for consideration. An establishment entering the Rural

1 Value Added Quality Jobs Act as the result of a change of control
2 event shall be required to maintain a level of new direct jobs as
3 agreed to in its contract with the Oklahoma Department of Commerce
4 and to pay new direct jobs an average annualized wage which equals
5 or exceeds one hundred twenty-five percent (125%) of the average
6 county wage as that percentage is determined by the Oklahoma State
7 Data Center based upon the most recent U.S. Department of Commerce
8 data for the county in which the new jobs are located. For purposes
9 of this paragraph, healthcare premiums paid by the applicant for
10 individuals in new direct jobs shall not be included in the
11 annualized wage. Such establishment entering the Rural Value Added
12 Quality Jobs Act as the result of a change of control event shall be
13 required to retain the contracted average annualized wage and
14 maintain the contracted maintenance level of new direct jobs numbers
15 as certified by the Oklahoma Tax Commission. If the required
16 average annualized wage or the required new direct jobs numbers do
17 not equal or exceed such contracted level during any quarter, the
18 quarterly incentive payments shall not be made and shall not be
19 resumed until such time as such requirements are met. An
20 establishment described in this paragraph shall be required to repay
21 all incentive payments received under the Rural Value Added Quality
22 Jobs Act if the establishment is determined by the Oklahoma Tax
23 Commission to no longer have business operations in the state within
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1 three (3) years from the beginning of the calendar quarter for which
2 the first incentive payment claim is filed;

3 3. "New direct job":

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

1 which has qualified to receive an incentive payment
2 and who are leased or otherwise provided under
3 contract to the qualified establishment, if such job
4 did not exist in this state prior to the date of
5 approval by the Department of the application of the
6 establishment or the job otherwise qualifies as a new
7 direct job following a change in control event. A job
8 shall be deemed to exist in this state prior to
9 approval of an application if the activities and
10 functions for which the particular job exists have
11 been ongoing at any time within six (6) months prior
12 to such approval;

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

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

- 19 a. the costs of education of new state resident children,
- 20 b. the costs of public health, public safety and
21 transportation services to be provided to new state
22 residents,
- 23 c. the costs of other state services to be provided to
24 new state residents, and

1 d. the costs of other state services;

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

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

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

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

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

12 9. a. "Establishment" means any business or governmental
13 entity, no matter what legal form, including, but not
14 limited to, a sole proprietorship; partnership;
15 limited liability company; corporation or combination
16 of corporations which have a central parent
17 corporation which makes corporate management decisions
18 such as those involving consolidation, acquisition,
19 merger or expansion; federal agency; political
20 subdivision of the State of Oklahoma; or trust
21 authority; provided, distinct, identifiable subunits
22 of such entities may be determined to be an
23 establishment, for all purposes of the Rural Value
24

1 Added Quality Jobs Act, by the Department subject to
2 the following conditions:

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

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

16 (3) has an accounting system capable of tracking or
17 facilitating an audit of the subunit's payroll,
18 expenses, revenue and production. Limited
19 interunit overlap of administrative and
20 purchasing functions shall not disqualify a
21 subunit from consideration as an establishment by
22 the Department,
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1 (4) the entity has not previously had a subunit
2 determined to be an establishment pursuant to
3 this section, and

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

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

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

20 11. "SIC Manual" means the 1987 revision to the Standard
21 Industrial Classification Manual, promulgated by the Office of
22 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 the Oklahoma Employment Security Commission.

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

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

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

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

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

- 21 1. Be located in a qualifying county;
- 22 2. Be engaged in a basic industry;
- 23 3. Have an annual gross payroll for new direct jobs projected
24 by the Department to equal or exceed Five Hundred Thousand Dollars

1 (\$500,000.00) within three (3) years of the first complete calendar
2 quarter following the start date; and

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

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

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

20 2. One hundred percent (100%) of the average county wage as
21 that percentage is determined by the Oklahoma State Data Center
22 based upon the most recent U.S. Department of Commerce data for the
23 county in which the new jobs are located. For purposes of this
24 paragraph, health care premiums paid by the applicant for

1 individuals in new direct jobs shall not be included in the
2 annualized wage.

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

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

18 2. As used in this subsection:

19 a. "negative economic event" means:

20 (1) a man-made disaster or natural disaster as
21 defined in Section 683.3 of Title 63 of the
22 Oklahoma Statutes, resulting in the loss of a
23 significant number of jobs within a particular
24 county of this state, or

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

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

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

23 F. The Department shall determine if the applicant is qualified
24 to receive incentive payments.

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

14 H. Upon approval of such an application, the Department shall
15 notify the Oklahoma Tax Commission and shall provide it with a copy
16 of the contract and the results of the cost/benefit analysis. The
17 Tax Commission may require the qualified establishment to submit
18 such additional information as may be necessary to administer the
19 provisions of the Rural Value Added Quality Jobs Act. The approved
20 establishment shall file quarterly claims with the Tax Commission
21 and shall continue to file such quarterly claims during the ten-year
22 incentive period to show its continued eligibility for incentive
23 payments, as provided in Section 6 of this act, or until it is no
24 longer qualified to receive incentive payments. The establishment

1 may be audited by the Tax Commission to verify such eligibility.
2 Once the establishment is approved, an agreement shall be deemed to
3 exist between the establishment and the State of Oklahoma, requiring
4 the continued incentive payment to be made as long as the
5 establishment retains its eligibility as defined in and established
6 pursuant to this section and Sections 3 and 6 of this act and within
7 the limitations contained in the Rural Value Added Quality Jobs Act,
8 which existed at the time of such approval.

9 I. A municipality in which an establishment eligible to receive
10 quarterly incentive payments pursuant to the provisions of this
11 section is located may file a claim with the Tax Commission for up
12 to twenty-five percent (25%) of the amount of such payment. The
13 amount of such claim shall not exceed amounts paid by the
14 municipality for direct costs of municipal infrastructure
15 improvements to provide water and sewer service to the
16 establishment. Such claim shall not be approved by the Tax
17 Commission unless the municipality and the establishment have
18 entered into a written agreement for such claims to be filed by the
19 municipality prior to submission of the application of the
20 establishment pursuant to the provisions of this section. If such
21 claim is approved, the amount of the payment to the establishment
22 made pursuant to the provisions of Section 6 of this title shall be
23 reduced by the amount of the approved claim by the municipality and
24 the Tax Commission shall issue a warrant to the municipality in the

1 amount of the approved claim in the same manner as warrants are
2 issued to qualifying establishments.

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

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

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

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

19 B. If the actual verified gross payroll for four (4)
20 consecutive calendar quarters does not equal or exceed the
21 applicable total required by Section 4 of this act within three (3)
22 years of the start date or does not equal or exceed the applicable
23 total required by Section 4 of this act at any other time during the
24 ten-year period after the start date the incentive payments shall

1 not be made and shall not be resumed until such time as the actual
2 verified gross payroll equals or exceeds the amounts specified in
3 Section 4 of this act.

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

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

11 E. An establishment that has qualified pursuant to Section 4 of
12 this act may receive payments only in accordance with the provisions
13 of the law under which it initially applied and was approved. If an
14 establishment that is receiving incentive payments expands, it may
15 apply for additional incentive payments based on the gross payroll
16 anticipated from the expansion only, pursuant to Section 4 of this
17 act. Provided, an establishment which has suffered an extraordinary
18 adverse business circumstance, as certified by the Incentive
19 Approval Committee, may be allowed to voluntarily withdraw from the
20 Rural Value Added Quality Jobs Act, repay to the Tax Commission the
21 total amount of incentive payments received pursuant to the
22 provisions of this section, plus interest at the rate specified in
23 Section 727.1 of Title 12 of the Oklahoma Statutes, and reapply to
24 the Department for a new incentive contract if the establishment

1 qualifies pursuant to the provisions of the Rural Value Added
2 Quality Jobs Act. Any funds received by the Tax Commission pursuant
3 to the provisions of this subsection shall be apportioned in the
4 manner that income tax revenues are apportioned.

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

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

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

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

8 1. Paragraphs 16 and 17 of Section 1357 of Title 68 of the
9 Oklahoma Statutes;

10 2. Paragraph 7 of Section 1359 of Title 68 of the Oklahoma
11 Statutes;

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

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

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

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

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

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

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

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

21 11. Subsections C and D of Section 2357.59 of Title 68 of the
22 Oklahoma Statutes;

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

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

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

2 B. Any establishment which has qualified to receive quarterly
3 incentive payments pursuant to subsection B of Section 4 of this act
4 for a ten-year period with a project start date after January 1,
5 2013, shall be eligible to receive the credit provided for in
6 Section 2357.4 of Title 68 of the Oklahoma Statutes if such
7 establishment:

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

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

14 3. Obtains a determination letter from the Oklahoma Department
15 of Commerce that the business activity of the entity will result in
16 a positive net benefit rate.

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

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

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

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

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

7 D. Any establishment which has qualified to receive quarterly
8 incentive payments pursuant to subsection B of Section 4 of this act
9 for a ten-year period with a project start date after January 1,
10 2013, shall be eligible to receive the credit provided for in
11 Section 2357.4 of Title 68 of the Oklahoma Statutes pursuant to the
12 provisions of this section if such establishment obtains a
13 determination letter from the Oklahoma Department of Commerce that
14 the business activity of the entity will result in a positive net
15 benefit rate, to be computed by the Oklahoma Department of Commerce
16 using a methodology which provides for the analysis of estimated
17 direct state benefits, estimated indirect state benefits, estimated
18 direct state costs and estimated indirect state costs. The Oklahoma
19 Department of Commerce shall use such information as it determines
20 to be relevant for the analysis required by this subsection
21 including, but not limited to, the type of business activity in
22 which the entity is engaged or will be engaged, amount of capital
23 investment, type of assets acquired or utilized by the business
24 entity, economic impact of the business activity within the relevant

1 geographic region and such other factors as the Department
2 determines to be relevant. The Oklahoma Department of Commerce may
3 use information regarding the business entity alone or in
4 conjunction with relevant information regarding other business
5 activity in a geographically relevant area surrounding the principal
6 business location of the primary business entity in order to perform
7 the computation of the net benefit rate. If the result of the
8 analysis is a positive net benefit rate, the establishment shall be
9 allowed to qualify to receive quarterly incentive payments pursuant
10 to subsection B of Section 3604 of Title 68 of the Oklahoma Statutes
11 for a ten-year period and shall be eligible to receive the credit
12 provided for in Section 2357.4 of Title 68 of the Oklahoma Statutes.
13 The Oklahoma Department of Commerce shall transmit a determination
14 letter to the authorized representative of the establishment and
15 shall also transmit a copy of the determination letter to the
16 Oklahoma Tax Commission, regardless of whether the result is a
17 positive or negative net benefit rate.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3958 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 The Oklahoma Department of Commerce and the Oklahoma Tax
22 Commission shall promulgate rules necessary to implement their
23 respective duties and responsibilities under the provisions of this
24 act.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3959 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 Any person making an application, claim for payment or any
5 report, return, statement or other instrument or providing any other
6 information pursuant to the provisions of this act who willfully
7 makes a false or fraudulent application, claim, report, return,
8 statement, invoice or other instrument or who willfully provides any
9 false or fraudulent information, or any person who willfully aids or
10 abets another in making such false or fraudulent application, claim,
11 report, return, statement, invoice or other instrument or who
12 willfully aids or abets another in providing any false or fraudulent
13 information, upon conviction, shall be guilty of a felony punishable
14 by the imposition of a fine of not less than One Thousand Dollars
15 (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00),
16 or imprisonment in the custody of the Department of Corrections for
17 not less than two (2) years and not more than five (5) years, or by
18 both such fine and imprisonment. Any person convicted of a
19 violation of this section shall be liable for the repayment of all
20 incentive payments which were paid to the establishment. Interest
21 shall be due on such payments at the rate of ten percent (10%) per
22 annum.

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

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

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

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