

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1052

By: Proctor

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 3604, which relates to the  
9 Oklahoma Quality Jobs Program Act; providing certain  
10 establishments not eligible for incentive payments  
based on employment practices as identified by the  
United States Department of Labor; providing an  
effective date; and declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3604, is  
15 amended to read as follows:

16 Section 3604. A. Except as otherwise provided in subsection I  
17 of this section, an establishment which meets the qualifications  
18 specified in the Oklahoma Quality Jobs Program Act may receive  
19 quarterly incentive payments for a ten-year period from the Oklahoma  
20 Tax Commission pursuant to the provisions of the Oklahoma Quality  
21 Jobs Program Act; provided, such an establishment defined or  
22 classified in the NAICS Manual under U.S. Industry No. 711211 (2007  
23 version) may receive quarterly incentive payments for a fifteen-year  
24 period. The amount of such payments shall be equal to the net

1 benefit rate multiplied by the actual gross payroll of new direct  
2 jobs for a calendar quarter as verified by the Oklahoma Employment  
3 Security Commission.

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

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

- 15 1. Be engaged in a basic industry;
- 16 2. Have an annual gross payroll for new direct jobs projected  
17 by the Department to equal or exceed Two Million Five Hundred  
18 Thousand Dollars (\$2,500,000.00) within three (3) years of the first  
19 complete calendar quarter following the start date; and
- 20 3. Have a number of full-time-equivalent employees subject to  
21 the tax imposed by Section 2355 of this title and working an annual  
22 average of thirty (30) or more hours per week in new direct jobs  
23 located in this state equal to or in excess of eighty percent (80%)  
24 of the total number of new direct jobs.

1 D. In order to qualify to receive incentive payments as  
2 authorized by the Oklahoma Quality Jobs Program Act, an  
3 establishment engaged in an activity described under:

4 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual  
5 shall be required to:

- 6 a. have an annual gross payroll for new direct jobs  
7 projected by the Department to equal or exceed One  
8 Million Five Hundred Thousand Dollars (\$1,500,000.00)  
9 within three (3) years of the first complete calendar  
10 quarter following the start date and make, or which  
11 will make within one (1) year, at least seventy-five  
12 percent (75%) of its total sales, as determined by the  
13 Incentive Approval Committee pursuant to the  
14 provisions of subsection B of Section 3603 of this  
15 title, to out-of-state customers or buyers, to in-  
16 state customers or buyers if the product or service is  
17 resold by the purchaser to an out-of-state customer or  
18 buyer for ultimate use, or to the federal government,  
19 unless the annual gross payroll equals or exceeds Two  
20 Million Five Hundred Thousand Dollars (\$2,500,000.00)  
21 in which case the requirements for purchase of output  
22 provided by this subparagraph shall not apply, and  
23 b. have a number of full-time-equivalent employees  
24 working an average of thirty (30) or more hours per

1 week in new direct jobs equal to or in excess of  
2 eighty percent (80%) of the total number of new direct  
3 jobs; and

4 2. Division (4) of subparagraph a of paragraph 1 of subsection  
5 A of Section 3603 of this title, shall be required to:

6 a. have an annual gross payroll for new direct jobs  
7 projected by the Department to equal or exceed One  
8 Million Five Hundred Thousand Dollars (\$1,500,000.00)  
9 within three (3) years of the first complete calendar  
10 quarter following the start date, and

11 b. have a number of full-time-equivalent employees  
12 working an average of thirty (30) or more hours per  
13 week in new direct jobs equal to or in excess of  
14 eighty percent (80%) of the total number of new direct  
15 jobs.

16 E. 1. An establishment which locates its principal business  
17 activity within a site consisting of at least ten (10) acres which:

18 a. is a federal Superfund removal site,  
19 b. is listed on the National Priorities List established  
20 under Section 9605 of Title 42 of the United States  
21 Code,

22 c. has been formally deferred to the state in lieu of  
23 listing on the National Priorities List, or  
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1           d.    has been determined by the Department of Environmental  
2                   Quality to be contaminated by any substance regulated  
3                   by a federal or state statute governing environmental  
4                   conditions for real property pursuant to an order of  
5                   the Department of Environmental Quality,  
6 shall qualify for incentive payments irrespective of its actual  
7 gross payroll or the number of full-time-equivalent employees  
8 engaged in new direct jobs.

9           2.    In order to qualify for the incentive payments pursuant to  
10 this subsection, the establishment shall conduct the activity  
11 resulting in at least fifty percent (50%) of its Oklahoma taxable  
12 income or adjusted gross income, as determined under Section 2358 of  
13 this title, whether from the sale of products or services or both  
14 products and services, at the physical location which has been  
15 determined not to comply with the federal or state statutes  
16 described in this subsection with respect to environmental  
17 conditions for real property. The establishment shall be subject to  
18 all other requirements of the Oklahoma Quality Jobs Program Act  
19 other than the exemptions provided by this subsection.

20           3.    In order to qualify for the incentive payments pursuant to  
21 this subsection, the entity shall obtain from the Department of  
22 Environmental Quality a letter of concurrence that:  
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1 a. the site designated by the entity does meet one or  
2 more of the requirements listed in paragraph 1 of this  
3 subsection, and

4 b. the site is being or has been remediated to a level  
5 which is consistent with the intended use of the  
6 property.

7 In making its determination, the Department of Environmental  
8 Quality may rely on existing data and information available to it,  
9 but may also require the applying entity to provide additional data  
10 and information as necessary.

11 4. If authorized by the Department of Environmental Quality  
12 pursuant to paragraph 3 of this subsection, the entity may utilize a  
13 remediated portion of the property for its intended purpose prior to  
14 remediation of the remainder of the site, and shall qualify for  
15 incentive payments based on employment associated with the portion  
16 of the site.

17 F. Except as otherwise provided by subsection G of this  
18 section, for applications submitted on and after June 4, 2003, in  
19 order to qualify to receive incentive payments as authorized by the  
20 Oklahoma Quality Jobs Program Act, in addition to other  
21 qualifications specified herein, an establishment shall be required  
22 to pay new direct jobs an average annualized wage which equals or  
23 exceeds:

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

7        2. One hundred percent (100%) of the average county wage as  
8 that percentage is determined by the Oklahoma State Data Center  
9 based upon the most recent U.S. Department of Commerce data for the  
10 county in which the new jobs are located. For purposes of this  
11 paragraph, health care premiums paid by the applicant for  
12 individuals in new direct jobs shall not be included in the  
13 annualized wage.

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

20        G. 1. As used in this subsection, "opportunity zone" means one  
21 or more census tracts in which, according to the most recent federal  
22 decennial census, at least thirty percent (30%) of the residents  
23 have annual gross household incomes from all sources below the  
24 poverty guidelines established by the U.S. Department of Health and

1 Human Services. An establishment which is otherwise qualified to  
2 receive incentive payments and which locates its principal business  
3 activity in an opportunity zone shall not be subject to the  
4 requirements of subsection F of this section.

5 2. As used in this subsection:

6 a. "negative economic event" means:

7 (1) a man-made disaster or natural disaster as  
8 defined in Section 683.3 of Title 63 of the  
9 Oklahoma Statutes, resulting in the loss of a  
10 significant number of jobs within a particular  
11 county of this state, or

12 (2) an economic circumstance in which a significant  
13 number of jobs within a particular county of this  
14 state have been lost due to an establishment  
15 changing its structure, consolidating with  
16 another establishment, closing or moving all or  
17 part of its operations out of this state, and

18 b. "significant number of jobs" means Local Area  
19 Unemployment Statistics (LAUS) data, as determined by  
20 the Bureau of Labor Statistics, for a county which are  
21 equal to or in excess of five percent (5%) of the  
22 total amount of Local Area Unemployment Statistics  
23 (LAUS) data for that county for the calendar year, or

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1           most recent twelve-month period in which employment is  
2           measured, preceding the event.

3           An establishment which is otherwise qualified to receive  
4           incentive payments and which locates in a county in which a negative  
5           economic event has occurred within the eighteen-month period  
6           preceding the start date shall not be subject to the requirements of  
7           subsection F of this section; provided, an establishment shall not  
8           be eligible to receive incentive payments based upon a negative  
9           economic event with respect to jobs that are transferred from one  
10          county of this state to another.

11          H. The Department shall determine if the applicant is qualified  
12          to receive incentive payments.

13          I. If the applicant is determined to be qualified by the  
14          Department and is not subject to the provisions of subparagraph d of  
15          paragraph 7 of subsection A of Section 3603 of this title, the  
16          Department shall conduct a cost/benefit analysis to determine the  
17          estimated net direct state benefits and the net benefit rate  
18          applicable for a ten-year period beginning with the first complete  
19          calendar quarter following the start date and to estimate the amount  
20          of gross payroll for a ten-year period beginning with the first  
21          complete calendar quarter following the start date or for a fifteen-  
22          year period for an establishment defined or classified in the NAICS  
23          Manual under U.S. Industry No. 711211 (2007 version). In conducting  
24          such cost/benefit analysis, the Department shall consider

1 quantitative factors, such as the anticipated level of new tax  
2 revenues to the state along with the added cost to the state of  
3 providing services, and such other criteria as deemed appropriate by  
4 the Department. In no event shall incentive payments, cumulatively,  
5 exceed the estimated net direct state benefits, except for  
6 applicants subject to the provisions of subparagraph d of paragraph  
7 7 of subsection A of Section 3603 of this title.

8 J. Upon approval of such an application, the Department shall  
9 notify the Tax Commission and shall provide it with a copy of the  
10 contract and the results of the cost/benefit analysis. The Tax  
11 Commission may require the qualified establishment to submit such  
12 additional information as may be necessary to administer the  
13 provisions of the Oklahoma Quality Jobs Program Act. The approved  
14 establishment shall file quarterly claims with the Tax Commission  
15 and shall continue to file such quarterly claims during the ten-year  
16 incentive period to show its continued eligibility for incentive  
17 payments, as provided in Section 3606 of this title, or until it is  
18 no longer qualified to receive incentive payments. The  
19 establishment may be audited by the Tax Commission to verify such  
20 eligibility. Once the establishment is approved, an agreement shall  
21 be deemed to exist between the establishment and the State of  
22 Oklahoma, requiring the continued incentive payment to be made as  
23 long as the establishment retains its eligibility as defined in and  
24 established pursuant to this section and Sections 3603 and 3606 of

1 this title and within the limitations contained in the Oklahoma  
2 Quality Jobs Program Act, which existed at the time of such  
3 approval.

4 K. A municipality with a population of less than one hundred  
5 thousand (100,000) persons in which an establishment eligible to  
6 receive quarterly incentive payments pursuant to the provisions of  
7 this section is located may file a claim with the Tax Commission for  
8 up to twenty-five percent (25%) of the amount of such payment. The  
9 amount of such claim shall not exceed amounts paid by the  
10 municipality for direct costs of municipal infrastructure  
11 improvements to provide water and sewer service to the  
12 establishment. Such claim shall not be approved by the Tax  
13 Commission unless the municipality and the establishment have  
14 entered into a written agreement for such claims to be filed by the  
15 municipality prior to submission of the application of the  
16 establishment pursuant to the provisions of this section. If such  
17 claim is approved, the amount of the payment to the establishment  
18 made pursuant to the provisions of Section 3606 of this title shall  
19 be reduced by the amount of the approved claim by the municipality  
20 and the Tax Commission shall issue a warrant to the municipality in  
21 the amount of the approved claim in the same manner as warrants are  
22 issued to qualifying establishments.

23 L. Notwithstanding any other provisions of this section, if an  
24 establishment otherwise eligible to receive an incentive payment

1 pursuant to the Oklahoma Quality Jobs Program Act is identified by  
2 the United States Department of Labor as outsourcing jobs to areas  
3 outside the United States, the establishment shall not receive any  
4 incentive payment pursuant to the provisions of this section.

5 SECTION 2. This act shall become effective July 1, 2013.

6 SECTION 3. 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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