

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1104

By: Brooks

4  
5  
6 AS INTRODUCED

7 An Act relating to Oklahoma Small Employer Quality  
8 Jobs Program Act; amending 68 O.S. 2011, Sections  
9 3903, as last amended by Section 1, Chapter 128,  
10 O.S.L. 2014, 3904, as amended by Section 28, Chapter  
11 227, O.S.L. 2013 and 3905 (68 O.S. Supp. 2015,  
12 Sections 3903 and 3904), which relate to criteria for  
13 certain incentive payments; modifying definition;  
14 modifying duration of time during which incentive  
15 payments are made; deleting certain requirement  
16 related to sales; modifying wage threshold  
17 requirement; modifying ramp up time period; and  
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3903, as  
21 last amended by Section 1, Chapter 128, O.S.L. 2014 (68 O.S. Supp.  
22 2015, Section 3903), is amended to read as follows:

23 Section 3903. As used in the Small Employer Quality Jobs  
24 Incentive Act:

25 1. "Basic industry" means a basic industry as defined under the  
26 Oklahoma Quality Jobs Program Act ~~in divisions (1) through (9) of~~  
27 ~~subparagraph a of paragraph 1 of subsection A of Section 3603 of~~  
28 ~~this title, excluding those activities described in division (10) of~~

1 ~~subparagraph a of paragraph 1 of subsection A of Section 3603 of~~  
2 ~~this title.~~ Provided, for the purposes of the Small Employer  
3 Quality Jobs Incentive Act, the determination required by  
4 subdivision (b) of division (7) or division (8) of subparagraph a of  
5 paragraph 1 of subsection A of Section 3603 of this title shall be  
6 made by the Oklahoma Department of Commerce and not the Incentive  
7 Approval Committee;

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

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

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

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

1 5. "Estimated net direct state benefits" means the estimated  
2 direct state benefits less the estimated direct state costs;

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

7 7. "Gross taxable payroll" means wages, as defined in Section  
8 2385.1 of this title, for new direct jobs;

9 8. "Net benefit rate" means the estimated net direct state  
10 benefits computed as a percentage of gross payroll; provided:

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

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

15 9. "New direct job" means full-time employment which did not  
16 exist in this state prior to the date of approval, by the Oklahoma  
17 Department of Commerce, of an application made pursuant to the Small  
18 Employer Quality Jobs Incentive Act. A job shall be deemed to exist  
19 in this state prior to approval of an application if the activities  
20 and functions for which the particular job exists have been ongoing  
21 at any time within six (6) months prior to such approval.

22 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3904, as  
23 amended by Section 28, Chapter 227, O.S.L. 2013 (68 O.S. Supp. 2015,  
24 Section 3904), is amended to read as follows:

1 Section 3904. A. An establishment which meets the  
2 qualifications specified in the Small Employer Quality Jobs  
3 Incentive Act may receive quarterly incentive payments for a ~~seven-~~  
4 year ten-year period from the Oklahoma Tax Commission pursuant to  
5 the provisions of the Small Employer Quality Jobs Incentive Act in  
6 an amount equal to the net benefit rate multiplied by the actual  
7 gross taxable payroll of new direct jobs as verified by the Tax  
8 Commission.

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

17 C. Before approving an application for incentive payments, the  
18 Department must first determine that the applicant meets the  
19 following requirements:

- 20 1. Be engaged in a basic industry;
- 21 2. Has no more than ninety full-time employees in this state on  
22 the date of application nor an average of more than ninety full-time  
23 employees in this state during the four calendar quarters  
24 immediately preceding the date of application;

1           3. Has a projected minimum employment, as determined by the  
2 Department, of new direct jobs within twelve (12) months of the date  
3 of application, or after July 1, 2011, within twenty-four (24)  
4 months of the date of application, as follows:

5           a. if the establishment is located in a municipality with  
6 a population less than three thousand five hundred  
7 (3,500) persons, as determined by the Department of  
8 Commerce based on the most recent U.S. Department of  
9 Commerce data, or if the establishment is located in  
10 an unincorporated area and the largest municipality  
11 within twenty (20) miles of the establishment is such  
12 a municipality, five new direct jobs,

13           b. if the establishment is located in a municipality with  
14 a population of three thousand five hundred (3,500)  
15 persons or more but less than seven thousand (7,000)  
16 persons, as determined by the Department of Commerce  
17 based on the most recent U.S. Department of Commerce  
18 data, or if the establishment is located in an  
19 unincorporated area and the largest municipality  
20 within twenty (20) miles of the establishment is such  
21 a municipality, ten new direct jobs, and

22           c. if the establishment is located in a municipality with  
23 a population of seven thousand (7,000) persons or  
24 more, as determined by the Department of Commerce

1 based on the most recent U.S. Department of Commerce  
2 data, or if the establishment is located in an  
3 unincorporated area and the largest municipality  
4 within twenty (20) miles of the establishment is such  
5 a municipality, fifteen new direct jobs.

6 Provided, for an establishment engaged in software publishing as  
7 defined or classified in the NAICS Manual under Industry Group No.  
8 5112, data processing, hosting and related services as defined or  
9 classified in the NAICS Manual under Industry Group No. 5182,  
10 computer systems design and related services as defined or  
11 classified in the NAICS Manual under Industry Group No. 5415,  
12 scientific research and development services as defined or  
13 classified in the NAICS Manual under Industry Group No. 5417,  
14 medical and diagnostic laboratories as defined or classified in the  
15 NAICS Manual under Industry Group No. 6215 or testing laboratories  
16 as defined or classified in the NAICS Manual under U.S. Industry No.  
17 541380, the projected minimum employment requirements of this  
18 paragraph must be achieved within thirty-six (36) months of the date  
19 of application;

20 4. ~~Has or will have within twelve (12) months of the date of~~  
21 ~~application, or after July 1, 2011, within twenty four (24) months~~  
22 ~~of the date of application, as determined by the Department, sales~~  
23 ~~of at least seventy five percent (75%) of its total sales to out-of-~~  
24 ~~state customers or buyers, to in-state customers or buyers if the~~

1 ~~product or service is resold by the purchaser to an out-of-state~~  
2 ~~customer or buyer for ultimate use, or to the federal government,~~  
3 ~~except that:~~

4 a. ~~those establishments in the NAICS Manual under the~~  
5 ~~U.S. Industry No. 541710 or 541380 are excused from~~  
6 ~~the seventy-five percent (75%) out-of-state sales~~  
7 ~~requirement,~~

8 b. ~~warehouses that serve as distribution centers for~~  
9 ~~retail or wholesale businesses shall be required to~~  
10 ~~distribute forty percent (40%) of inventory to out-of-~~  
11 ~~state locations, and~~

12 c. ~~adjustment and collection services activities defined~~  
13 ~~or classified in the NAICS Manual under U.S. Industry~~  
14 ~~No. 561440 shall be required to have seventy-five~~  
15 ~~percent (75%) of loans to be serviced made by out-of-~~  
16 ~~state debtors;~~

17 ~~5.~~ Will pay the individuals it employs in new direct jobs an  
18 average annualized wage which equals or exceeds:

19 a. ~~one hundred twenty five percent (125%)~~ one hundred ten  
20 percent (110%) of the average county wage of small  
21 employers located in that county as that percentage is  
22 determined by the Department of Commerce based on the  
23 most recent wage and employment data from the Oklahoma  
24 Employment Security Commission for the county in which

1 the new direct jobs are located. For purposes of this  
2 subparagraph, health care premiums paid by the  
3 applicant for individuals in new direct jobs shall be  
4 included in the annualized wage, or

5 b. ~~one hundred ten percent (110%)~~ one hundred percent  
6 (100%) of the average county wage of small employers  
7 located in that county as that percentage is  
8 determined by the Department of Commerce based upon  
9 the most recent wage and employment data from the  
10 Oklahoma Employment Security Commission for the county  
11 in which the new direct jobs are located. For  
12 purposes of this subparagraph, health care premiums  
13 paid by the applicant for individuals in new direct  
14 jobs shall not be included in the annualized wage, ~~or~~

15 ~~c. one hundred percent (100%) of the average county wage,~~  
16 ~~excluding health care premiums paid by the applicant~~  
17 ~~for individuals in new direct jobs if the county in~~  
18 ~~which the new jobs are located has:~~

19 ~~(1) according to the most recent annual determination~~  
20 ~~by the Oklahoma Employment Security Commission, a~~  
21 ~~county unemployment rate more than ten percent~~  
22 ~~(10%) higher than the state unemployment rate,~~  
23 and  
24

1                   ~~(2) according to the most recent United States Census~~  
2                   ~~Bureau Data, a county personal poverty rate above~~  
3                   ~~fifteen percent (15%);~~

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

9           ~~7.~~ 6. Has not received incentive payments under the Oklahoma  
10 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former  
11 Military Facility Development Act; and

12           ~~8.~~ 7. Is not qualified for approval of an application for  
13 incentive payments under the Oklahoma Quality Jobs Program Act, the  
14 Saving Quality Jobs Act, or the Former Military Facility Development  
15 Act.

16           D. The Oklahoma Department of Commerce shall determine if an  
17 applicant is qualified to receive the incentive payment. Upon  
18 qualifying the applicant, the Department shall notify the Tax  
19 Commission and shall provide it with a copy of the application, and  
20 approval which shall provide the number of persons employed by the  
21 applicant upon the date of approval and the maximum total incentives  
22 which may be paid to the applicant during the ~~seven-year~~ ten-year  
23 period. The Tax Commission may require the qualified establishment  
24 to submit additional information as may be necessary to administer

1 the provisions of the Small Employer Quality Jobs Incentive Act.  
2 The approved establishment shall report to the Tax Commission  
3 quarterly to show its continued eligibility for incentive payments,  
4 as provided in Section 3905 of this title. Establishments may be  
5 audited by the Tax Commission to verify such eligibility. Once the  
6 establishment is approved, an agreement shall be deemed to exist  
7 between the establishment and the State of Oklahoma, requiring  
8 incentive payments to be made for a ~~seven-year~~ ten-year period as  
9 long as the establishment retains its eligibility and within the  
10 limitations of the Small Employer Quality Jobs Incentive Act which  
11 existed at the time of such approval. Any establishment which has  
12 been approved for incentive payments prior to July 1, 2002, shall  
13 continue to receive such payments pursuant to the laws as they  
14 existed prior to July 1, 2002, for any period of time of the  
15 original five-year period for such payments remaining after July 1,  
16 2002.

17 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3905, is  
18 amended to read as follows:

19 Section 3905. A. 1. Beginning with the first complete  
20 calendar quarter after the application of the establishment is  
21 approved by the Oklahoma Department of Commerce, the establishment  
22 shall begin filing quarterly reports with the Oklahoma Tax  
23 Commission that specify the actual number and individual gross  
24 taxable payroll of new direct jobs for the establishment and such

1 other information as required by the Tax Commission. In no event  
2 shall the first claim for incentive payments be filed later than  
3 three (3) years from the start date designated by the Department.  
4 The Tax Commission shall verify the actual individual gross taxable  
5 payroll for new direct jobs. If the Tax Commission is not able to  
6 provide such verification utilizing all available resources, the Tax  
7 Commission may request additional information from the establishment  
8 as may be necessary or may request the establishment to revise its  
9 reports.

10 The establishment shall continue filing such reports during the  
11 seven-year incentive period or until it is no longer qualified to  
12 receive incentive payments. Such reports shall constitute a claim  
13 for quarterly incentive payments by the establishment.

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

- 18 a. created and or maintained the minimum number of new  
19 direct jobs as specified in paragraph 3 of subsection  
20 C of Section 3904 of this title, and
- 21 b. paid the individuals it employed in new direct jobs an  
22 annualized wage which equaled or exceeded the  
23 applicable percentage of the average county wage as  
24 that percentage was determined by the Oklahoma

1 Department of Commerce upon approval of the  
2 application.

3 3. Upon determining that an establishment has met the  
4 requirements of paragraph 2 of this subsection for the initial  
5 calendar quarter of the incentive period, the Tax Commission shall  
6 issue a warrant to the establishment in an amount which shall be  
7 equal to the net benefit rate multiplied by the amount of gross  
8 taxable payroll of new direct jobs actually paid by the  
9 establishment.

10 B. Except as provided in subsection C of this section, the  
11 quarterly incentive payment provided for in subsection A of this  
12 section shall be allowed in each of the twenty-seven subsequent  
13 calendar quarters.

14 C. 1. An establishment which does not meet the requirements of  
15 paragraph 2 of subsection A of this section within twelve (12)  
16 months of the date of its application, or after July 1, 2011, within  
17 ~~twenty-four (24)~~ thirty-six (36) months of the date of its  
18 application, shall be ineligible to receive any incentive payments  
19 pursuant to its application and approval.

20 2. An establishment which at any time during the twenty-seven  
21 subsequent calendar quarters does not meet the requirements of  
22 paragraph 2 of subsection A of this section shall be ineligible to  
23 receive an incentive payment during the calendar quarter in which  
24 such requirements are not met.

1 SECTION 4. This act shall become effective November 1, 2016.

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