

1 **SENATE FLOOR VERSION**

2 April 7, 2021

3 ENGROSSED HOUSE  
4 BILL NO. 2860

By: Wallace of the House

5 and

6 Thompson of the Senate

7  
8 An Act relating to revenue and taxation; enacting the  
9 Oklahoma Remote Quality Jobs Incentive Act; stating  
10 legislative intent; defining terms; providing for  
11 payment of incentive amounts; providing for  
12 computation of incentive payment amounts; prescribing  
13 procedures for applications and incentive payments;  
14 imposing restriction on eligibility dates for  
15 projects; imposing requirements related to payment of  
16 average annualized wages; providing for cost/benefit  
17 analysis; providing for computation of net benefit  
18 rate; providing for computation of incentive payment  
19 amounts; prescribing procedures related to claims  
20 filed with the Oklahoma Tax Commission; authorizing  
21 audit; providing for continued incentive payments;  
22 providing exception; creating Oklahoma Remote Quality  
23 Jobs Incentive Payment Fund; providing for deposit of  
24 income tax revenues; prescribing method for  
determining deposit; requiring verification of  
payroll; providing for termination of incentive  
payments under certain conditions; providing for  
incentive payments to resume; prohibiting payment of  
incentives in excess of certain amount; prohibiting  
participation in designated incentives based upon  
payment of incentives pursuant to this act; requiring  
promulgation of rules; prescribing penalties for  
false statements; providing for punishment as felony;  
requiring repayment of incentive amounts; requiring  
Oklahoma Department of Commerce to prepare report;  
requiring periodic submission of report; providing  
for codification; providing an effective date; and  
declaring an emergency.

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

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

5 This act shall be known and may be cited as the "Oklahoma Remote  
6 Quality Jobs Incentive Act".

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

10 It is the intent of the Legislature that:

11 1. The State of Oklahoma provide appropriate incentives to  
12 attract growth industries and sectors that employ remote workers to  
13 Oklahoma through a policy of rewarding businesses with a highly  
14 skilled, knowledge-based workforce;

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

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

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

4           A. As used in the Oklahoma Remote Quality Jobs Incentive Act:

5           1. "Basic industry" means an establishment that attracts remote  
6 workers to the state whose purpose is to increase the state's  
7 population and who may receive rebates on the remote workers,  
8 provided, that the remote workers meet the wage and health insurance  
9 requirements in the state and provide evidence of such to the proxy  
10 establishment;

11           2. "New direct job" shall include full-time-equivalent  
12 employment in this state of remote workers who are employed by an  
13 establishment other than the proxy establishment which has qualified  
14 to receive incentive payments for attracting remote workers to the  
15 state. Such jobs held by remote workers did not exist in this state  
16 prior to the date of approval by the Oklahoma Department of Commerce  
17 of the application of the proxy establishment. A job shall be  
18 deemed to exist in this state prior to approval of an application if  
19 the activities and functions for which the particular job exists  
20 have been ongoing at any time within six (6) months prior to such  
21 approval;

22           3. "Proxy establishment" means:

23           a. a public trust which:  
24

1 (1) is organized and existing under Section 176 of  
2 Title 60 of the Oklahoma Statutes for the benefit  
3 of a geographic area which includes a city or  
4 county or some combination thereof, and

5 (2) benefits a geographic area where new direct jobs  
6 which meet the requirements of the Oklahoma  
7 Remote Quality Jobs Incentive Act are created by  
8 an establishment, other than the proxy  
9 establishment, or

10 b. an establishment which facilitates the attraction of  
11 remote workers to the State of Oklahoma;

12 4. "Remote worker" refers to a work flexibility arrangement  
13 under which an employee performs the duties and responsibilities of  
14 such employee's position, and other authorized activities, from an  
15 approved work site other than the location from which the employee  
16 would otherwise work, which shall not be located within the physical  
17 boundaries of the State of Oklahoma. The remote worker should not  
18 have lived in the State of Oklahoma in the previous twelve (12)  
19 months;

20 5. "Estimated direct state benefits" means the tax revenues  
21 projected by the Department to accrue to the state as a result of  
22 new direct jobs;

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

4           a. the costs of education of new state resident children,

5           b. the costs of public health, public safety and  
6           transportation services to be provided to new state  
7           residents,

8           c. the costs of other state services to be provided to  
9           new state residents, and

10          d. the costs of other state services;

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

13       8. "Net benefit rate" means the estimated net direct state  
14 benefits computed as a percentage of gross payroll, and shall not  
15 exceed five percent (5%).

16       B. A proxy establishment shall be required to obtain from  
17 remote workers proof of basic health benefits plans for the  
18 individuals it includes in an application. The proxy establishment  
19 shall submit the information to the Oklahoma Department of Commerce  
20 and shall ensure that the basic health benefits plans consist of the  
21 following elements or elements substantially equivalent thereto:

22           1. Not more than fifty percent (50%) of the premium shall be  
23 paid by the employee;

24           2. Coverage for basic hospital care;

- 1 3. Coverage for physician care;
- 2 4. Coverage for mental health care;
- 3 5. Coverage for substance abuse treatment;
- 4 6. Coverage for prescription drugs; and
- 5 7. Coverage for prenatal care.

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

9 A. A proxy establishment that facilitates the attraction of  
10 remote workers to the State of Oklahoma which meets the  
11 qualifications specified in the Oklahoma Remote Quality Jobs  
12 Incentive Act may receive quarterly incentive payments for a ten-  
13 quarter period. The amount of such payments shall be equal to the  
14 net benefit rate multiplied by the actual gross payroll of new  
15 direct jobs for a calendar quarter as verified by the Oklahoma  
16 Employment Security Commission.

17 B. In order to qualify to receive incentive payments as  
18 authorized by the Oklahoma Remote Quality Jobs Incentive Act, a  
19 proxy establishment shall be required to:

20 1. For proxy establishments located in counties with total  
21 population less than five hundred thousand (500,000):

- 22 a. have an annual gross payroll for new direct jobs  
23 projected by the Oklahoma Department of Commerce to  
24 equal or exceed Five Hundred Thousand Dollars

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

- 4 b. have a number of full-time-equivalent employees  
5 working an average of thirty (30) or more hours per  
6 week in the new direct jobs equal to or in excess of  
7 eighty percent (80%) of the total number of new direct  
8 jobs; or

9 2. For proxy establishments in counties with total population  
10 exceeding five hundred thousand (500,000):

- 11 a. have an annual gross payroll for new direct jobs  
12 projected by the Oklahoma Department of Commerce to  
13 equal or exceed One Million Five Hundred Thousand  
14 Dollars (\$1,500,000.00) within one (1) year of the  
15 first complete calendar quarter following the start  
16 date, and

- 17 b. have a number of full-time-equivalent employees  
18 working an average of thirty (30) or more hours per  
19 week in the new direct jobs equal to or in excess of  
20 eighty percent (80%) of the total number of new direct  
21 jobs.

22 c. In order to receive incentive payments, a proxy  
23 establishment shall apply to the Oklahoma Department of Commerce.

24 The application shall be on a form prescribed by the Department and

1 shall contain remote workers, the companies that they presently work  
2 for, and other such information as may be required by the Department  
3 to determine if the applicant is qualified. A proxy establishment  
4 may apply for an effective date for a project, which shall not be  
5 more than twenty-four (24) months from the date the application is  
6 submitted to the Department.

7 D. In order to qualify to receive incentive payments as  
8 authorized by the Oklahoma Remote Quality Jobs Incentive Act, in  
9 addition to other qualifications specified herein, the proxy  
10 establishment shall be required to include remote workers whose  
11 average annualized wage equals or exceeds the average wage  
12 requirements specified in Section 3604 of Title 68 of the Oklahoma  
13 Statutes.

14 E. The Department shall determine if the applicant is qualified  
15 to receive incentive payments.

16 F. If the applicant is determined to be qualified by the  
17 Department, the Department shall conduct a cost/benefit analysis to  
18 determine the estimated net direct state benefits and the net  
19 benefit rate applicable for a ten-quarter period beginning with the  
20 first complete calendar quarter following the start date and to  
21 estimate the amount of gross payroll for a ten-quarter period  
22 beginning with the first complete calendar quarter following the  
23 start date. In conducting such cost/benefit analysis, the  
24 Department shall consider quantitative factors, such as the

1 anticipated level of new tax revenues to the state along with the  
2 added cost to the state of providing services, and such other  
3 criteria as deemed appropriate by the Department. In no event shall  
4 incentive payments, cumulatively, exceed the estimated net direct  
5 state benefits or exceed the cumulative payments made by a proxy  
6 establishment to remote workers.

7 G. Upon approval of such an application, the Department shall  
8 notify the Tax Commission and shall provide it with a copy of the  
9 contract and the results of the cost/benefit analysis. The Tax  
10 Commission may require the qualified establishment to submit such  
11 additional information as may be necessary to administer the  
12 provisions of the Oklahoma Remote Quality Jobs Incentive Act. The  
13 approved proxy establishment shall file quarterly claims with the  
14 Tax Commission and shall continue to file such quarterly claims  
15 during the ten-quarter incentive period to show its continued  
16 eligibility for incentive payments, as provided in Section 6 of this  
17 act, or until it is no longer qualified to receive incentive  
18 payments. The proxy establishment may be audited by the Tax  
19 Commission to verify such eligibility. Once the proxy establishment  
20 is approved, an agreement shall be deemed to exist between the proxy  
21 establishment and the State of Oklahoma requiring the continued  
22 incentive payment to be made as long as the proxy establishment  
23 retains its eligibility as defined in and established pursuant to  
24 this section and Sections 3 and 5 of this act and within the

1 limitations contained in the Oklahoma Remote Quality Jobs Incentive  
2 Act, which existed at the time of such approval.

3 SECTION 5. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 4505 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 "Oklahoma  
8 Remote 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 this act. All of the amounts deposited in such fund shall be used  
16 and expended by the Tax Commission solely for the purposes and in  
17 the amounts authorized by the Oklahoma Remote Quality Jobs Incentive  
18 Act. The liability of the State of Oklahoma to make the incentive  
19 payments under this act shall be limited to the balance contained in  
20 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 4506 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 proxy establishment  
3 shall file a claim for the payment with the Oklahoma Tax Commission  
4 and shall specify the actual number and gross payroll of new direct  
5 jobs of remote workers for the proxy establishment for the calendar  
6 quarter. The Tax Commission shall verify the actual gross payroll  
7 for new direct jobs for the proxy establishment for such calendar  
8 quarter. If the Tax Commission is not able to provide such  
9 verification utilizing all available resources, the Tax Commission  
10 may request such additional information from the proxy establishment  
11 as may be necessary or may request the proxy establishment to revise  
12 its claim. A proxy establishment may file for an extension of the  
13 initial filing date with the Oklahoma Department of Commerce. Any  
14 such extension shall be based solely upon an extraordinary adverse  
15 business circumstance which prevented the proxy establishment from  
16 attracting the remote workers in the new direct jobs as projected.  
17 If a proxy establishment fails to file claims as required by this  
18 section, it shall forfeit the right to receive any incentive  
19 payments after two (2) years from the start date. If an  
20 establishment has filed at least one claim pursuant to this section  
21 but fails to file another claim within two (2) years of the most  
22 recent claim, the Tax Commission, after consulting with the  
23 Department of Commerce, may dismiss the establishment from the

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1 program, forfeiting the establishment's right to receive incentive  
2 payments based on that contract.

3 B. If the actual verified gross payroll for four (4)  
4 consecutive calendar quarters does not equal or exceed the  
5 applicable total required by Section 4 of this act within twelve  
6 (12) months of the start date, or does not equal or exceed the  
7 applicable total required by Section 4 of this act at any other time  
8 during the ten-quarter period after the start date, the incentive  
9 payments shall not be made and shall not be resumed until such time  
10 as the actual verified gross payroll equals or exceeds the amounts  
11 specified in Section 4 of this act. If a proxy establishment fails  
12 to achieve the required gross payroll within twelve (12) months of  
13 the start date, the proxy establishment shall not make a new or  
14 renewal application for incentive payments authorized pursuant to  
15 the Oklahoma Remote Quality Jobs Incentive Act for a period of  
16 twelve (12) months from the last day of the last month of the ten-  
17 quarter period during which the required gross payroll amount was  
18 not achieved.

19 C. If the average annualized wage required for a proxy  
20 establishment does not equal or exceed the amount specified in  
21 paragraph 1 or 2 of subsection F of Section 3604 of Title 68 of the  
22 Oklahoma Statutes during any calendar quarter, the incentive  
23 payments shall not be made and shall not be resumed until such time  
24 as such requirements are met.

1 D. In no event shall incentive payments, cumulatively, exceed  
2 the estimated net direct state benefits or exceed the cumulative  
3 payments made by a proxy establishment to remote workers.

4 E. The proxy establishment shall be responsible for collecting  
5 payroll statements or other such documentation of withholding taxes  
6 paid to the State of Oklahoma from remote workers and shall submit  
7 that information to the Oklahoma Tax Commission.

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 Notwithstanding any other provision of law, if a qualified proxy  
12 establishment receives an incentive payment pursuant to the  
13 provisions of this act, neither the qualified proxy establishment  
14 nor the companies associated with the remote workers shall be  
15 eligible to receive the credits or exemptions provided for in the  
16 following provisions of law in connection with the activity for  
17 which the incentive payment was received:

18 1. Section 3603 of Title 68 of the Oklahoma Statutes (Oklahoma  
19 Quality Jobs Program Act);

20 2. Section 3901 of Title 68 of the Oklahoma Statutes (Small  
21 Employer Quality Jobs Incentive Act);

22 3. Section 3911 of Title 68 of the Oklahoma Statutes (21st  
23 Century Quality Jobs Incentive Act); or

1 4. Paragraphs 16 and 17 of Section 1357 of Title 68 of the  
2 Oklahoma Statutes.

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

6 The Oklahoma Department of Commerce and the Oklahoma Tax  
7 Commission shall promulgate rules necessary to implement their  
8 respective duties and responsibilities under the provisions of this  
9 act.

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

13 Any person making an application, claim for payment or any  
14 report, return, statement or other instrument or providing any other  
15 information pursuant to the provisions of this act who willfully  
16 makes a false or fraudulent application, claim, report, return,  
17 statement, invoice or other instrument or who willfully provides any  
18 false or fraudulent information, or any person who willfully aids or  
19 abets another in making such false or fraudulent application, claim,  
20 report, return, statement, invoice or other instrument or who  
21 willfully aids or abets another in providing any false or fraudulent  
22 information, upon conviction, shall be guilty of a felony punishable  
23 by the imposition of a fine of not less than One Thousand Dollars  
24 (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00),

1 or imprisonment in the State Penitentiary for not less than two (2)  
2 years and not more than five (5) years, or by both such fine and  
3 imprisonment. Any person convicted of a violation of this section  
4 shall be liable for the repayment of all incentive payments which  
5 were paid to the establishment. Interest shall be due on such  
6 payments at the rate of ten percent (10%) per annum.

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

10 The Oklahoma Department of Commerce shall prepare triennially a  
11 report which shall include, but not be limited to, documentation of  
12 the new direct jobs created under the Oklahoma Remote Quality Jobs  
13 Incentive Act and a fiscal analysis of the costs and benefits of  
14 this act to the state. The report shall be submitted to the  
15 President Pro Tempore of the Senate, the Speaker of the House of  
16 Representatives and the Governor of this state no later than March  
17 1, 2023, and every three (3) years thereafter. The report may be  
18 used for the purpose of determining whether to continue or sunset  
19 the Oklahoma Remote Quality Jobs Incentive Act.

20 SECTION 11. This act shall become effective July 1, 2021.

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

3 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
4 April 7, 2021 - DO PASS

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