

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2326 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: James Lockhart

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 2326

By: Lockhart

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 3903 and 3904, which relate to the Small Employer Quality Jobs Incentive Act; modifying definitions; extending payment period for certain establishments; modifying eligibility requirements dealing with population; modifying out-of-state sales requirement; modifying annualized wage requirements; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 3903, is amended to read as follows:

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

1. "Basic industry" means:

a. a basic industry as defined under the Oklahoma Quality Jobs Program Act in divisions (1) through (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, excluding those activities

described in division (10) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title. Provided, for the purposes of the Small Employer Quality Jobs Incentive Act, the determination required by subdivision (b) of division (7) or division (8) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title shall be made by the Oklahoma Department of Commerce and not the Incentive Approval Committee, and

b. those mining activities defined or classified in the NAICS Manual under Industry Group No. 212;

2. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation located in a county with a population of not more than two hundred thousand (200,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data or located in an "opportunity zone"; provided, a business classified as research and development in the physical, engineering and life sciences as described under U.S. Industry Number 541710 or classified as a testing laboratory as described under U.S. Industry Number 541380 in the North American Industry Classification System (NAICS) Manual shall be considered to be an establishment for purposes of the Small Employer Quality Jobs Incentive Act regardless

1 of the population of the county in which the establishment is
2 located. As used in this paragraph, "opportunity zone" means one or
3 more census tracts in which, according to the most recent Federal
4 Decennial Census, at least thirty percent (30%) of the residents
5 have annual gross household incomes from all sources below the
6 poverty guidelines established by the U.S. Department of Health and
7 Human Services;

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

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

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

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

23 6. "Full-time employment" means employment of persons residing
24 in this state and working for thirty (30) hours per week or more in

1 this state, which has a minimum six-month duration during any
2 twelve-month period;

3 7. "Gross taxable payroll" means wages, as defined in Section
4 2385.1 of this title, for new direct jobs;

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

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

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

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

18 10. "Rural value-added area" means those areas experiencing a
19 distressed economy which have establishments of basic industries
20 that hold the promise of significant development of the rural
21 economy as defined by a county in which:

22 a. the per capita personal income, as determined by the
23 Department, is eighty-five percent (85%) or less of
24 the statewide average per capita personal income,

1 b. the population has decreased over the previous ten
2 (10) years, as determined by the State Data Center
3 based on the most recent U.S. Department of Commerce
4 data, or

5 c. the unemployment rate exceeds the lesser of six
6 percent (6%) or two (2) percentage points above the
7 state average unemployment rate as certified by the
8 Oklahoma Employment Security Commission.

9 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3904, is
10 amended to read as follows:

11 Section 3904. A. 1. An establishment which meets the
12 qualifications specified in the Small Employer Quality Jobs
13 Incentive Act may receive quarterly incentive payments for a seven-
14 year period from the Oklahoma Tax Commission pursuant to the
15 provisions of the Small Employer Quality Jobs Incentive Act in an
16 amount equal to the net benefit rate multiplied by the actual gross
17 taxable payroll of new direct jobs as verified by the Tax
18 Commission.

19 2. An establishment in a rural value-added area which meets the
20 qualifications specified in the Small Employer Quality Jobs
21 Incentive Act may receive quarterly incentive payments for a ten-
22 year period from the Oklahoma Tax Commission pursuant to the
23 provisions of the Small Employer Quality Jobs Incentive Act in an
24 amount equal to the net benefit rate multiplied by the actual gross

1 taxable payroll of new direct jobs as verified by the Tax
2 Commission.

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

11 C. Before approving an application for incentive payments, the
12 Department must first determine that the applicant meets the
13 following requirements:

14 1. Be engaged in a basic industry;

15 2. Has no more than ninety full-time employees in this state on
16 the date of application nor an average of more than ninety full-time
17 employees in this state during the four calendar quarters
18 immediately preceding the date of application;

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

23 a. if the establishment is located in a municipality with
24 a population less than three thousand five hundred

(3,500) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the ~~largest~~ closest municipality ~~within twenty (20) miles of the establishment~~ is such a municipality, five new direct jobs,

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

c. if the establishment is located in a municipality with a population of seven thousand (7,000) persons or more, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the ~~largest~~ closest municipality ~~within twenty (20) miles of the~~

1 ~~establishment~~ is such a municipality, fifteen new
2 direct jobs.

3 Provided, for an establishment engaged in software publishing as
4 defined or classified in the NAICS Manual under Industry Group No.
5 5112, data processing, hosting and related services as defined or
6 classified in the NAICS Manual under Industry Group No. 5182,
7 computer systems design and related services as defined or
8 classified in the NAICS Manual under Industry Group No. 5415,
9 scientific research and development services as defined or
10 classified in the NAICS Manual under Industry Group No. 5417,
11 medical and diagnostic laboratories as defined or classified in the
12 NAICS Manual under Industry Group No. 6215 or testing laboratories
13 as defined or classified in the NAICS Manual under U.S. Industry No.
14 541380, the projected minimum employment requirements of this
15 paragraph must be achieved within thirty-six (36) months of the date
16 of application;

17 4. Has or will have within twelve (12) months of the date of
18 application, or after July 1, 2011, within twenty-four (24) months
19 of the date of application, as determined by the Department, sales
20 of at least seventy-five percent (75%) of its total sales to out-of-
21 state customers or buyers, to in-state customers or buyers if the
22 product or service is resold by the purchaser to an out-of-state
23 customer or buyer for ultimate use, or to the federal government,
24 except that:

- a. those establishments in the NAICS Manual under the U.S. Industry No. 541710 or 541380 are excused from the seventy-five percent (75%) out-of-state sales requirement,
- b. warehouses that serve as distribution centers for retail or wholesale businesses shall be required to distribute forty percent (40%) of inventory to out-of-state locations, ~~and~~
- c. adjustment and collection services activities defined or classified in the NAICS Manual under U.S. Industry No. 561440 shall be required to have seventy-five percent (75%) of loans to be serviced made by out-of-state debtors, and
- d. those establishments in a rural value-added area which meet the qualifications specified in the Small Employer Quality Jobs Incentive Act shall be required to meet a fifty percent (50%) out-of-state sales requirement;

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

- a. one hundred twenty-five percent (125%) of the average county wage of small employers located in that county as that percentage is determined by the Oklahoma State Data Center based on the most recent wage and

1 employment data from the Oklahoma Employment Security
2 Commission for the county in which the new direct jobs
3 are located. For purposes of this subparagraph,
4 health care premiums paid by the applicant for
5 individuals in new direct jobs shall be included in
6 the annualized wage, or

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

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

21 (1) according to the most recent annual determination
22 by the Oklahoma Employment Security Commission, a
23 county unemployment rate more than ten percent
24

(10%) higher than the state unemployment rate,
and

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

Provided, no average wage requirement shall exceed Twenty-five
Thousand Dollars (\$25,000.00) for those establishments in a rural
value-added area. This maximum wage threshold shall be indexed and
modified periodically based on the latest Consumer Price Index year-
to-date percent change release as of the date of the annual update
of wages determined by the Oklahoma State Data Center based upon the
most recent wage and employment data from the Oklahoma Employment
Security Commission;

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

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

8. Is not qualified for approval of an application for
incentive payments under the Oklahoma Quality Jobs Program Act, the

1 Saving Quality Jobs Act, or the Former Military Facility Development
2 Act.

3 D. The Oklahoma Department of Commerce shall determine if an
4 applicant is qualified to receive the incentive payment. Upon
5 qualifying the applicant, the Department shall notify the Tax
6 Commission and shall provide it with a copy of the application, and
7 approval which shall provide the number of persons employed by the
8 applicant upon the date of approval and the maximum total incentives
9 which may be paid to the applicant during the seven-year period.
10 The Tax Commission may require the qualified establishment to submit
11 additional information as may be necessary to administer the
12 provisions of the Small Employer Quality Jobs Incentive Act. The
13 approved establishment shall report to the Tax Commission quarterly
14 to show its continued eligibility for incentive payments, as
15 provided in Section 3905 of this title. Establishments may be
16 audited by the Tax Commission to verify such eligibility. Once the
17 establishment is approved, an agreement shall be deemed to exist
18 between the establishment and the State of Oklahoma, requiring
19 incentive payments to be made for a seven-year period as long as the
20 establishment retains its eligibility and within the limitations of
21 the Small Employer Quality Jobs Incentive Act which existed at the
22 time of such approval. Any establishment which has been approved
23 for incentive payments prior to July 1, 2002, shall continue to
24 receive such payments pursuant to the laws as they existed prior to

1 July 1, 2002, for any period of time of the original five-year
2 period for such payments remaining after July 1, 2002.

3 SECTION 3. This act shall become effective July 1, 2012.

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

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9 53-2-9825 CJB 02/28/12
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