

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2326

By: Lockhart

COMMITTEE SUBSTITUTE

[ revenue and taxation - Small Employer Quality Jobs  
Incentive Act - modifying definitions - extending  
payment period - eligibility requirements - out-of-  
state sales requirement - annualized wage  
requirements - effective date -  
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

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

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

13 2. "Establishment" means any business, no matter what legal  
14 form, including, but not limited to, a sole proprietorship,  
15 partnership, corporation, or limited liability corporation located  
16 in a county with a population of not more than two hundred thousand  
17 (200,000) persons, as determined by the Oklahoma State Data Center  
18 based on the most recent U.S. Department of Commerce data or located  
19 in an "opportunity zone"; provided, a business classified as  
20 research and development in the physical, engineering and life  
21 sciences as described under U.S. Industry Number 541710 or  
22 classified as a testing laboratory as described under U.S. Industry  
23 Number 541380 in the North American Industry Classification System  
24 (NAICS) Manual shall be considered to be an establishment for

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

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

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

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

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

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

5       7. "Gross taxable payroll" means wages, as defined in Section  
6 2385.1 of this title, for new direct jobs;

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

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

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

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

20       10. "Rural value-added area" means those areas experiencing a  
21 distressed economy which have establishments of basic industries  
22 that hold the promise of significant development of the rural  
23 economy as defined by a county in which:  
24

- a. the per capita personal income, as determined by the Department, is eighty-five percent (85%) or less of the statewide average per capita personal income,
- b. the population has decreased over the previous ten (10) years, as determined by the State Data Center based on the most recent U.S. Department of Commerce data, or
- c. the unemployment rate exceeds the lesser of six percent (6%) or two (2) percentage points above the state average unemployment rate as certified by the Oklahoma Employment Security Commission.

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

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

2. An establishment in a rural value-added area which meets the qualifications specified in the Small Employer Quality Jobs Incentive Act may receive quarterly incentive payments for a ten-

1 year period from the Oklahoma Tax Commission pursuant to the  
2 provisions of the Small Employer Quality Jobs Incentive Act in an  
3 amount equal to the net benefit rate multiplied by the actual gross  
4 taxable payroll of new direct jobs as verified by the Tax  
5 Commission.

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

14 C. Before approving an application for incentive payments, the  
15 Department must first determine that the applicant meets the  
16 following requirements:

- 17 1. Be engaged in a basic industry;
- 18 2. Has no more than ninety full-time employees in this state on  
19 the date of application nor an average of more than ninety full-time  
20 employees in this state during the four calendar quarters  
21 immediately preceding the date of application;
- 22 3. Has a projected minimum employment, as determined by the  
23 Department, of new direct jobs within twelve (12) months of the date  
24

1 of application, or after July 1, 2011, within twenty-four (24)  
2 months of the date of application, as follows:

- 3           a.   if the establishment is located in a municipality with  
4               a population less than three thousand five hundred  
5               (3,500) persons, as determined by the Oklahoma State  
6               Data Center based on the most recent U.S. Department  
7               of Commerce data, or if the establishment is located  
8               in an unincorporated area and the ~~largest~~ closest  
9               municipality ~~within twenty (20) miles of the~~  
10              ~~establishment~~ is such a municipality, five new direct  
11              jobs,
- 12           b.   if the establishment is located in a municipality with  
13               a population of three thousand five hundred (3,500)  
14               persons or more but less than seven thousand (7,000)  
15               persons, as determined by the Oklahoma State Data  
16               Center based on the most recent U.S. Department of  
17               Commerce data, or if the establishment is located in  
18               an unincorporated area and the ~~largest~~ closest  
19               municipality ~~within twenty (20) miles of the~~  
20              ~~establishment~~ is such a municipality, ten new direct  
21              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 Oklahoma State Data Center

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~~ closest  
4 municipality ~~within twenty (20) miles of the~~  
5 ~~establishment~~ is such a municipality, fifteen new  
6 direct jobs.

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

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



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

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

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

- 1           a.    one hundred twenty-five percent (125%) of the average  
2                county wage of small employers located in that county  
3                as that percentage is determined by the Oklahoma State  
4                Data Center based on the most recent wage and  
5                employment data from the Oklahoma Employment Security  
6                Commission for the county in which the new direct jobs  
7                are located. For purposes of this subparagraph,  
8                health care premiums paid by the applicant for  
9                individuals in new direct jobs shall be included in  
10              the annualized wage, or
- 11           b.    one hundred ten percent (110%) of the average county  
12                wage of small employers located in that county as that  
13                percentage is determined by the Oklahoma State Data  
14                Center based upon the most recent wage and employment  
15                data from the Oklahoma Employment Security Commission  
16                for the county in which the new direct jobs are  
17                located. For purposes of this subparagraph, health  
18                care premiums paid by the applicant for individuals in  
19                new direct jobs shall not be included in the  
20              annualized wage~~+~~   or
- 21           c.    one hundred percent (100%) of the average county wage,  
22                excluding health care premiums paid by the applicant  
23                for individuals in new direct jobs if the county in  
24                which the new jobs are located has:

1 (1) according to the most recent annual determination  
2 by the Oklahoma Employment Security Commission, a  
3 county unemployment rate more than ten percent  
4 (10%) higher than the state unemployment rate,  
5 and

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

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

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

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

1        8. Is not qualified for approval of an application for  
2 incentive payments under the Oklahoma Quality Jobs Program Act, the  
3 Saving Quality Jobs Act, or the Former Military Facility Development  
4 Act.

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

1 for incentive payments prior to July 1, 2002, shall continue to  
2 receive such payments pursuant to the laws as they existed prior to  
3 July 1, 2002, for any period of time of the original five-year  
4 period for such payments remaining after July 1, 2002.

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

6 SECTION 4. 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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