

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2326

By: Lockhart, Pruett, Cannaday,
Pittman, Fourkiller, Scott,
Kouplen and McNiel of the
House

7
8 and

9 Ellis of the Senate

10
11 COMMITTEE SUBSTITUTE

12 [revenue and taxation - Small Employer Quality Jobs
13 Incentive Act - modifying definitions - extending
14 payment period - eligibility requirements - out-of-
15 state sales requirement - annualized wage
16 requirements - effective date -
17 emergency]

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

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

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

3 1. "Basic industry" means:

- 4 a. a basic industry as defined under the Oklahoma Quality
5 Jobs Program Act in divisions (1) through (9) of
6 subparagraph a of paragraph 1 of subsection A of
7 Section 3603 of this title, excluding those activities
8 described in division (10) of subparagraph a of
9 paragraph 1 of subsection A of Section 3603 of this
10 title. Provided, for the purposes of the Small
11 Employer Quality Jobs Incentive Act, the determination
12 required by subdivision (b) of division (7) or
13 division (8) of subparagraph a of paragraph 1 of
14 subsection A of Section 3603 of this title shall be
15 made by the Oklahoma Department of Commerce and not
16 the Incentive Approval Committee, and
17 b. those mining activities defined or classified in the
18 NAICS Manual under Industry Group No. 212;

19 2. "Establishment" means any business, no matter what legal
20 form, including, but not limited to, a sole proprietorship,
21 partnership, corporation, or limited liability corporation located
22 in a county with a population of not more than two hundred thousand
23 (200,000) persons, as determined by the Oklahoma State Data Center
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1 based on the most recent U.S. Department of Commerce data or located
2 in an "opportunity zone"; provided, a business classified as
3 research and development in the physical, engineering and life
4 sciences as described under U.S. Industry Number 541710 or
5 classified as a testing laboratory as described under U.S. Industry
6 Number 541380 in the North American Industry Classification System
7 (NAICS) Manual shall be considered to be an establishment for
8 purposes of the Small Employer Quality Jobs Incentive Act regardless
9 of the population of the county in which the establishment is
10 located. As used in this paragraph, "opportunity zone" means one or
11 more census tracts in which, according to the most recent Federal
12 Decennial Census, at least thirty percent (30%) of the residents
13 have annual gross household incomes from all sources below the
14 poverty guidelines established by the U.S. Department of Health and
15 Human Services;

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

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

22 a. the costs of education of new state resident children,
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b. the costs of public health, public safety and transportation services to be provided to new state residents,

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

d. the costs of other state services;

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

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

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

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

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

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

9. "New direct job" means full-time employment which did not exist in this state prior to the date of approval, by the Oklahoma Department of Commerce, of an application made pursuant to the Small

1 Employer Quality Jobs Incentive Act. A job shall be deemed to exist
2 in this state prior to approval of an application if the activities
3 and functions for which the particular job exists have been ongoing
4 at anytime within six (6) months prior to such approval; and

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

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

12 b. the population has decreased over the previous ten
13 (10) years, as determined by the State Data Center
14 based on the most recent U.S. Department of Commerce
15 data, or

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

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

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

7 2. An establishment in a rural value-added area which meets the
8 qualifications specified in the Small Employer Quality Jobs
9 Incentive Act may receive quarterly incentive payments for a ten-
10 year period from the Oklahoma Tax Commission pursuant to the
11 provisions of the Small Employer Quality Jobs Incentive Act in an
12 amount equal to the net benefit rate multiplied by the actual gross
13 taxable payroll of new direct jobs as verified by the Tax
14 Commission.

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

1 C. Before approving an application for incentive payments, the
2 Department must first determine that the applicant meets the
3 following requirements:

4 1. Be engaged in a basic industry;

5 2. Has no more than ninety full-time employees in this state on
6 the date of application nor an average of more than ninety full-time
7 employees in this state during the four calendar quarters
8 immediately preceding the date of application;

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

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

22 b. if the establishment is located in a municipality with
23 a population of three thousand five hundred (3,500)

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

- 9 c. if the establishment is located in a municipality with
10 a population of seven thousand (7,000) persons or
11 more, as determined by the Oklahoma State Data Center
12 based on the most recent U.S. Department of Commerce
13 data, or if the establishment is located in an
14 unincorporated area and the ~~largest~~ closest
15 municipality ~~within twenty (20) miles of the~~
16 ~~establishment~~ is such a municipality, fifteen new
17 direct jobs.

18 Provided, for an establishment engaged in software publishing as
19 defined or classified in the NAICS Manual under Industry Group No.
20 5112, data processing, hosting and related services as defined or
21 classified in the NAICS Manual under Industry Group No. 5182,
22 computer systems design and related services as defined or
23 classified in the NAICS Manual under Industry Group No. 5415,

1 scientific research and development services as defined or
2 classified in the NAICS Manual under Industry Group No. 5417,
3 medical and diagnostic laboratories as defined or classified in the
4 NAICS Manual under Industry Group No. 6215 or testing laboratories
5 as defined or classified in the NAICS Manual under U.S. Industry No.
6 541380, the projected minimum employment requirements of this
7 paragraph must be achieved within thirty-six (36) months of the date
8 of application;

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

17 a. those establishments in the NAICS Manual under the
18 U.S. Industry No. 541710 or 541380 are excused from
19 the seventy-five percent (75%) out-of-state sales
20 requirement,

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

3 c. adjustment and collection services activities defined
4 or classified in the NAICS Manual under U.S. Industry
5 No. 561440 shall be required to have seventy-five
6 percent (75%) of loans to be serviced made by out-of-
7 state debtors, and

8 d. those establishments in a rural value-added area which
9 meet the qualifications specified in the Small
10 Employer Quality Jobs Incentive Act shall be required
11 to meet a fifty percent (50%) out-of-state sales
12 requirement;

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

15 a. one hundred twenty-five percent (125%) of the average
16 county wage of small employers located in that county
17 as that percentage is determined by the Oklahoma State
18 Data Center based on the most recent wage and
19 employment data from the Oklahoma Employment Security
20 Commission for the county in which the new direct jobs
21 are located. For purposes of this subparagraph,
22 health care premiums paid by the applicant for
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1 individuals in new direct jobs shall be included in
2 the annualized wage, or

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

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

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

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

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

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

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

20 8. Is not qualified for approval of an application for
21 incentive payments under the Oklahoma Quality Jobs Program Act, the
22 Saving Quality Jobs Act, or the Former Military Facility Development
23 Act.

1 D. The Oklahoma Department of Commerce shall determine if an
2 applicant is qualified to receive the incentive payment. Upon
3 qualifying the applicant, the Department shall notify the Tax
4 Commission and shall provide it with a copy of the application, and
5 approval which shall provide the number of persons employed by the
6 applicant upon the date of approval and the maximum total incentives
7 which may be paid to the applicant during the seven-year period.
8 The Tax Commission may require the qualified establishment to submit
9 additional information as may be necessary to administer the
10 provisions of the Small Employer Quality Jobs Incentive Act. The
11 approved establishment shall report to the Tax Commission quarterly
12 to show its continued eligibility for incentive payments, as
13 provided in Section 3905 of this title. Establishments may be
14 audited by the Tax Commission to verify such eligibility. Once the
15 establishment is approved, an agreement shall be deemed to exist
16 between the establishment and the State of Oklahoma, requiring
17 incentive payments to be made for a seven-year period as long as the
18 establishment retains its eligibility and within the limitations of
19 the Small Employer Quality Jobs Incentive Act which existed at the
20 time of such approval. Any establishment which has been approved
21 for incentive payments prior to July 1, 2002, shall continue to
22 receive such payments pursuant to the laws as they existed prior to
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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 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
10 03/01/2012 - DO PASS, As Amended and Coauthored.