

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3324

By: Fetgatter

COMMITTEE SUBSTITUTE

An Act relating to economic development incentives; amending 62 O.S. 2011, Section 48.2, as amended by Section 428, Chapter 304, O.S.L. 2012 (62 O.S. Supp. 2017, Section 48.2), which relates to the Quick Action Closing Fund; providing for receipt of certain payment amounts pursuant to the Oklahoma Quality Jobs Program Act, the Small Employer Quality Jobs Incentive Act and the 21st Century Quality Jobs Incentive Act; amending 68 O.S. 2011, Section 3604, as last amended by Section 22, Chapter 4, O.S.L. 2014 (68 O.S. Supp. 2017, Section 3604), which relates to the Oklahoma Quality Jobs Program Act; amending 68 O.S. 2011, Section 3904, as amended by Section 28, Chapter 227, O.S.L. 2013 (68 O.S. Supp. 2017, Section 3904), which relates to the Small Employer Quality Jobs Incentive Act; amending 68 O.S. 2011, Section 3914, as last amended by Section 24, Chapter 4, O.S.L. 2014 (68 O.S. Supp. 2017, Section 3914), which relates to the 21st Century Quality Jobs Incentive Act; providing for transfer of certain incentive payments to the Quick Action Closing Fund; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as amended by Section 428, Chapter 304, O.S.L. 2012 (62 O.S. Supp. 2017, Section 48.2), is amended to read as follows:

1 Section 48.2 A. There is hereby created in the State Treasury
2 a revolving fund for the Oklahoma Department of Commerce to be
3 designated the Oklahoma Quick Action Closing Fund. The fund shall
4 be a continuing fund, not subject to fiscal year limitations and
5 shall consist of:

6 1. All monies apportioned or allocated to the fund pursuant to
7 law;

8 2. Any amounts appropriated by the Legislature to the fund;

9 3. Interest earned on the investment of money in the fund; and

10 4. Gifts, grants, and other donations received for the fund;

11 and

12 5. Five percent (5%) of all funds paid by the Tax Commission to
13 establishments that execute contracts for payment of incentives
14 pursuant to the Oklahoma Quality Jobs Program Act and the 21st
15 Century Quality Jobs Act if the contract is executed on or after the
16 effective date of this act.

17 B. All monies accruing to the credit of the fund are hereby
18 appropriated and may be budgeted and expended by the Governor for
19 the purposes of economic development and related infrastructure
20 development in instances in which expenditure of such funds would
21 likely be a determining factor in locating a high-impact business
22 project or facility in Oklahoma or in retaining such project or
23 facility within the state. Expenditures from the fund shall be made
24 upon warrants issued by the State Treasurer against claims filed as

1 prescribed by law with the Director of the Office of Management and
2 Enterprise Services for approval and payment.

3 C. In order to qualify for any funds from the Oklahoma Quick
4 Action Closing Fund, the establishment making application shall be
5 engaged in a business activity described by a North American
6 Industry Classification System (NAICS) Code used to define
7 eligibility for incentive payments from the Oklahoma Quality Jobs
8 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
9 Statutes or a business activity described by Section 3603 of Title
10 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
11 to define eligibility for incentive payments from the 21st Century
12 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
13 of the Oklahoma Statutes.

14 D. The Governor shall not approve payments from the Oklahoma
15 Quick Action Closing Fund unless the Department of Commerce has
16 conducted a complete analysis of the potential impact of the
17 applicant's business activity which shall include, but not be
18 limited to:

19 1. The number of jobs to be created by a new business
20 establishment;

21 2. The number of jobs to be retained by an existing business
22 establishment;

23 3. The average salary of jobs to be created by a new
24 establishment;

1 4. The average salary of jobs to be retained by an existing
2 business establishment;

3 5. The total capital investment to be made by the business
4 establishment;

5 6. The likelihood of other business establishments locating
6 within the same vicinity or within the state as a result of the
7 business activity to be conducted by the entity to receive payments
8 from the Oklahoma Quick Action Closing Fund;

9 7. The impact on the economy of the area or community in which
10 the business activity of the applicant is or will be conducted; and

11 8. Such other factors as the Governor and the Department of
12 Commerce determine to be relevant.

13 E. The Oklahoma Department of Commerce shall administer the
14 Oklahoma Quick Action Closing Fund, and expenditures from the fund
15 shall be recommended by the Director of the Oklahoma Department of
16 Commerce to the Governor after a thorough evaluation of selected
17 projects or facilities. The Director of the Oklahoma Department of
18 Commerce shall only recommend expenditures that the Director
19 determines are expected to result in a net economic benefit to the
20 state through the following:

21 1. The creation of new jobs which offer a basic health benefit
22 plan, as defined in the Oklahoma Quality Jobs Program Act;

23 2. The maintenance of existing jobs which are at a risk for
24 termination;

1 3. Investment in new real property, plant or equipment or in
2 the improvement or retooling of existing plant or equipment; or

3 4. Additional revenues in either ad valorem, income or sales
4 and use taxes.

5 F. The Oklahoma Department of Commerce shall develop rules for
6 the process of reviewing proposed expenditures from the Oklahoma
7 Quick Action Closing Fund and for the determination of whether or
8 not proposed expenditures meet the criteria identified in subsection
9 E of this section. Criteria shall include requirements for economic
10 impact, local participation in the project, capital investment and
11 average wage thresholds.

12 G. Upon receipt of an evaluation that recommends an expenditure
13 from the Oklahoma Quick Action Closing Fund from the Director of the
14 Oklahoma Department of Commerce, the Governor shall provide the
15 evaluation and recommendation to the President Pro Tempore of the
16 State Senate and the Speaker of the Oklahoma House of
17 Representatives before giving final approval for the expenditure on
18 the project. The Executive Office of the Governor shall recommend
19 final approval of an expenditure on a project pursuant to
20 consultation with the President Pro Tempore of the State Senate and
21 the Speaker of the Oklahoma House of Representatives.

22 H. Upon approval by the Governor, the Oklahoma Department of
23 Commerce shall enter into an agreement that sets forth the
24

1 conditions for payment of monies from the Oklahoma Quick Action
2 Closing Fund. The agreement must include:

3 1. The total amount of funds awarded;

4 2. The performance conditions that must be met to obtain the
5 award, including, but not limited to, net new employment in the
6 state, average salary, and total capital investment;

7 3. If appropriate, a baseline of current service and measure of
8 enhanced capability;

9 4. The methodology of validating performance;

10 5. The schedule of payments from the fund, and claw-back
11 provisions for failure to meet performance conditions; and

12 6. A requirement that no monies paid from the Oklahoma Quick
13 Action Closing Fund shall be used by a recipient or any other person
14 or entity for purposes of any political contribution to or on behalf
15 of any candidate or for the support of or opposition to any measure
16 including but not limited to an initiative petition or referendum.

17 I. The Department of Commerce shall make available on its
18 website or other website dedicated for this purpose a complete
19 disclosure of all payments made from the Oklahoma Quick Action
20 Closing Fund. The disclosure shall include a description of the
21 expenditures made by the business establishment with the payments
22 made from the fund. No proprietary information of the business
23 establishment shall be subject to the requirements of this
24 subsection.

1 J. If any or all of the amount to be awarded is used to build a
2 capital improvement:

3 1. The funds used for the capital improvement shall be deemed
4 to be held in trust for the benefit of the state and shall be
5 considered as a priority claim for purposes of federal bankruptcy
6 law; and

7 2. If the capital improvement is sold, the recipient of the
8 award shall:

9 a. repay the state the money awarded to pay for the
10 capital improvement, with interest at the rate and
11 according to the other terms provided by the
12 agreement, and

13 b. share with the state a proportionate amount of any
14 profit realized from the sale.

15 K. If, as of the date certain provided in the agreement, the
16 award recipient has not used monies awarded for the intended
17 purposes, the recipient shall repay that amount and any related
18 interest to the state at the agreed rate and on the agreed terms and
19 any such amounts shall be deemed to be held in trust for the benefit
20 of the state and shall be considered as a priority claim for
21 purposes of federal bankruptcy law.

22 L. The provisions of this act shall cease to have the force and
23 effect of law on the July 1 date of the sixth fiscal year after the
24 first fiscal year for which any funds are deposited to, appropriated

1 to, apportioned to or otherwise transferred to the Oklahoma Quick
2 Action Closing Fund.

3 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3604, as
4 last amended by Section 22, Chapter 4, O.S.L. 2014 (68 O.S. Supp.
5 2017, Section 3604), is amended to read as follows:

6 Section 3604. A. Except as otherwise provided in subsection I
7 or subsection L of this section, an establishment which meets the
8 qualifications specified in the Oklahoma Quality Jobs Program Act
9 may receive quarterly incentive payments for a ten-year period from
10 the Oklahoma Tax Commission pursuant to the provisions of the
11 Oklahoma Quality Jobs Program Act; provided, such an establishment
12 defined or classified in the NAICS Manual under U.S. Industry No.
13 711211 (2007 version) may receive quarterly incentive payments for a
14 fifteen-year period. The amount of such payments shall be equal to
15 the net benefit rate multiplied by the actual gross payroll of new
16 direct jobs for a calendar quarter as verified by the Oklahoma
17 Employment Security Commission.

18 B. In order to receive incentive payments, an establishment
19 shall apply to the Oklahoma Department of Commerce. The application
20 shall be on a form prescribed by the Department and shall contain
21 such information as may be required by the Department to determine
22 if the applicant is qualified. An establishment may apply for an
23 effective date for a project, which shall not be more than twenty-

1 four (24) months from the date the application is submitted to the
2 Department.

3 C. Except as otherwise provided by subsection D or E of this
4 section, in order to qualify to receive such payments, the
5 establishment applying shall be required to:

6 1. Be engaged in a basic industry;

7 2. Have an annual gross payroll for new direct jobs projected
8 by the Department to equal or exceed Two Million Five Hundred
9 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
10 complete calendar quarter following the start date; and

11 3. Have a number of full-time-equivalent employees subject to
12 the tax imposed by Section 2355 of this title and working an annual
13 average of thirty (30) or more hours per week in new direct jobs
14 located in this state equal to or in excess of eighty percent (80%)
15 of the total number of new direct jobs.

16 D. In order to qualify to receive incentive payments as
17 authorized by the Oklahoma Quality Jobs Program Act, an
18 establishment engaged in an activity described under:

19 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual
20 shall be required to:

21 a. have an annual gross payroll for new direct jobs
22 projected by the Department to equal or exceed One
23 Million Five Hundred Thousand Dollars (\$1,500,000.00)
24 within three (3) years of the first complete calendar

1 quarter following the start date and make, or which
2 will make within one (1) year, at least seventy-five
3 percent (75%) of its total sales, as determined by the
4 Incentive Approval Committee pursuant to the
5 provisions of subsection B of Section 3603 of this
6 title, to out-of-state customers or buyers, to in-
7 state customers or buyers if the product or service is
8 resold by the purchaser to an out-of-state customer or
9 buyer for ultimate use, or to the federal government,
10 unless the annual gross payroll equals or exceeds Two
11 Million Five Hundred Thousand Dollars (\$2,500,000.00)
12 in which case the requirements for purchase of output
13 provided by this subparagraph shall not apply, and

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

19 2. Division (4) of subparagraph a of paragraph 1 of subsection
20 A of Section 3603 of this title, shall be required to:

21 a. have an annual gross payroll for new direct jobs
22 projected by the Department to equal or exceed One
23 Million Five Hundred Thousand Dollars (\$1,500,000.00)
24

1 within three (3) years of the first complete calendar
2 quarter following the start date, and

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

8 E. 1. An establishment which locates its principal business
9 activity within a site consisting of at least ten (10) acres which:

- 10 a. is a federal Superfund removal site,
11 b. is listed on the National Priorities List established
12 under Section 9605 of Title 42 of the United States
13 Code,
14 c. has been formally deferred to the state in lieu of
15 listing on the National Priorities List, or
16 d. has been determined by the Department of Environmental
17 Quality to be contaminated by any substance regulated
18 by a federal or state statute governing environmental
19 conditions for real property pursuant to an order of
20 the Department of Environmental Quality,

21 shall qualify for incentive payments irrespective of its actual
22 gross payroll or the number of full-time-equivalent employees
23 engaged in new direct jobs.

1 2. In order to qualify for the incentive payments pursuant to
2 this subsection, the establishment shall conduct the activity
3 resulting in at least fifty percent (50%) of its Oklahoma taxable
4 income or adjusted gross income, as determined under Section 2358 of
5 this title, whether from the sale of products or services or both
6 products and services, at the physical location which has been
7 determined not to comply with the federal or state statutes
8 described in this subsection with respect to environmental
9 conditions for real property. The establishment shall be subject to
10 all other requirements of the Oklahoma Quality Jobs Program Act
11 other than the exemptions provided by this subsection.

12 3. In order to qualify for the incentive payments pursuant to
13 this subsection, the entity shall obtain from the Department of
14 Environmental Quality a letter of concurrence that:

- 15 a. the site designated by the entity does meet one or
16 more of the requirements listed in paragraph 1 of this
17 subsection, and
- 18 b. the site is being or has been remediated to a level
19 which is consistent with the intended use of the
20 property.

21 In making its determination, the Department of Environmental
22 Quality may rely on existing data and information available to it,
23 but may also require the applying entity to provide additional data
24 and information as necessary.

1 4. If authorized by the Department of Environmental Quality
2 pursuant to paragraph 3 of this subsection, the entity may utilize a
3 remediated portion of the property for its intended purpose prior to
4 remediation of the remainder of the site, and shall qualify for
5 incentive payments based on employment associated with the portion
6 of the site.

7 F. Except as otherwise provided by subsection G of this
8 section, for applications submitted on and after June 4, 2003, in
9 order to qualify to receive incentive payments as authorized by the
10 Oklahoma Quality Jobs Program Act, in addition to other
11 qualifications specified herein, an establishment shall be required
12 to pay new direct jobs an average annualized wage which equals or
13 exceeds:

14 1. One hundred ten percent (110%) of the average county wage as
15 determined by the Department of Commerce based on the most recent
16 U.S. Department of Commerce data for the county in which the new
17 direct jobs are located. For purposes of this paragraph, health
18 care premiums paid by the applicant for individuals in new direct
19 jobs shall be included in the annualized wage; or

20 2. One hundred percent (100%) of the average county wage as
21 that percentage is determined by the Department of Commerce based
22 upon the most recent U.S. Department of Commerce data for the county
23 in which the new jobs are located. For purposes of this paragraph,
24

1 health care premiums paid by the applicant for individuals in new
2 direct jobs shall not be included in the annualized wage.

3 Provided, no average wage requirement shall exceed Twenty-five
4 Thousand Dollars (\$25,000.00), in any county. This maximum wage
5 threshold shall be indexed and modified from time to time based on
6 the latest Consumer Price Index year-to-date percent change release
7 as of the date of the annual average county wage data release from
8 the Bureau of Economic Analysis of the U.S. Department of Commerce.

9 G. 1. As used in this subsection, "opportunity zone" means one
10 or more census tracts in which, according to the most recent federal
11 decennial census, at least thirty percent (30%) of the residents
12 have annual gross household incomes from all sources below the
13 poverty guidelines established by the U.S. Department of Health and
14 Human Services. An establishment which is otherwise qualified to
15 receive incentive payments and which locates its principal business
16 activity in an opportunity zone shall not be subject to the
17 requirements of subsection F of this section.

18 2. As used in this subsection:

19 a. "negative economic event" means:

20 (1) a man-made disaster or natural disaster as
21 defined in Section 683.3 of Title 63 of the
22 Oklahoma Statutes, resulting in the loss of a
23 significant number of jobs within a particular
24 county of this state, or

(2) an economic circumstance in which a significant number of jobs within a particular county of this state have been lost due to an establishment changing its structure, consolidating with another establishment, closing or moving all or part of its operations out of this state, and

b. "significant number of jobs" means Local Area Unemployment Statistics (LAUS) data, as determined by the Bureau of Labor Statistics, for a county which are equal to or in excess of five percent (5%) of the total amount of Local Area Unemployment Statistics (LAUS) data for that county for the calendar year, or most recent twelve-month period in which employment is measured, preceding the event.

An establishment which is otherwise qualified to receive incentive payments and which locates in a county in which a negative economic event has occurred within the eighteen-month period preceding the start date shall not be subject to the requirements of subsection F of this section; provided, an establishment shall not be eligible to receive incentive payments based upon a negative economic event with respect to jobs that are transferred from one county of this state to another.

H. The Department shall determine if the applicant is qualified to receive incentive payments.

1 I. If the applicant is determined to be qualified by the
2 Department and is not subject to the provisions of subparagraph d of
3 paragraph 7 of subsection A of Section 3603 of this title, the
4 Department shall conduct a cost/benefit analysis to determine the
5 estimated net direct state benefits and the net benefit rate
6 applicable for a ten-year period beginning with the first complete
7 calendar quarter following the start date and to estimate the amount
8 of gross payroll for a ten-year period beginning with the first
9 complete calendar quarter following the start date or for a fifteen-
10 year period for an establishment defined or classified in the NAICS
11 Manual under U.S. Industry No. 711211 (2007 version). In conducting
12 such cost/benefit analysis, the Department shall consider
13 quantitative factors, such as the anticipated level of new tax
14 revenues to the state along with the added cost to the state of
15 providing services, and such other criteria as deemed appropriate by
16 the Department. In no event shall incentive payments, cumulatively,
17 exceed the estimated net direct state benefits, except for
18 applicants subject to the provisions of subparagraph d of paragraph
19 7 of subsection A of Section 3603 of this title.

20 J. Upon approval of such an application, the Department shall
21 notify the Tax Commission and shall provide it with a copy of the
22 contract and the results of the cost/benefit analysis. The Tax
23 Commission may require the qualified establishment to submit such
24 additional information as may be necessary to administer the

1 provisions of the Oklahoma Quality Jobs Program Act. The approved
2 establishment shall file quarterly claims with the Tax Commission
3 and shall continue to file such quarterly claims during the ten-year
4 incentive period to show its continued eligibility for incentive
5 payments, as provided in Section 3606 of this title, or until it is
6 no longer qualified to receive incentive payments. The
7 establishment may be audited by the Tax Commission to verify such
8 eligibility. Once the establishment is approved, an agreement shall
9 be deemed to exist between the establishment and the State of
10 Oklahoma, requiring the continued incentive payment to be made as
11 long as the establishment retains its eligibility as defined in and
12 established pursuant to this section and Sections 3603 and 3606 of
13 this title and within the limitations contained in the Oklahoma
14 Quality Jobs Program Act, which existed at the time of such
15 approval. An establishment described in this subsection shall be
16 required to repay all incentive payments received under the Oklahoma
17 Quality Jobs Program Act if the establishment is determined by the
18 Oklahoma Tax Commission to no longer have business operations in the
19 state within three (3) years from the beginning of the calendar
20 quarter for which the first incentive payment claim is filed.

21 K. A municipality with a population of less than one hundred
22 thousand (100,000) persons in which an establishment eligible to
23 receive quarterly incentive payments pursuant to the provisions of
24 this section is located may file a claim with the Tax Commission for

1 up to twenty-five percent (25%) of the amount of such payment. The
2 amount of such claim shall not exceed amounts paid by the
3 municipality for direct costs of municipal infrastructure
4 improvements to provide water and sewer service to the
5 establishment. Such claim shall not be approved by the Tax
6 Commission unless the municipality and the establishment have
7 entered into a written agreement for such claims to be filed by the
8 municipality prior to submission of the application of the
9 establishment pursuant to the provisions of this section. If such
10 claim is approved, the amount of the payment to the establishment
11 made pursuant to the provisions of Section 3606 of this title shall
12 be reduced by the amount of the approved claim by the municipality
13 and the Tax Commission shall issue a warrant to the municipality in
14 the amount of the approved claim in the same manner as warrants are
15 issued to qualifying establishments.

16 L. For any contract executed by an establishment on or after
17 the effective date of this act, five percent (5%) of the quarterly
18 incentive payment amount shall be transferred by the Oklahoma Tax
19 Commission to the Quick Action Closing Fund.

20 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3904, as
21 amended by Section 28, Chapter 227, O.S.L. 2013 (68 O.S. Supp. 2017,
22 Section 3904), is amended to read as follows:

23 Section 3904. A. An establishment which meets the
24 qualifications specified in the Small Employer Quality Jobs

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

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

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

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

1 unincorporated area and the largest municipality
2 within twenty (20) miles of the establishment is such
3 a municipality, fifteen new direct jobs.

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

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

1 customer or buyer for ultimate use, or to the federal government,
2 except that:

- 3 a. those establishments in the NAICS Manual under the
4 U.S. Industry No. 541710 or 541380 are excused from
5 the seventy-five percent (75%) out-of-state sales
6 requirement,
- 7 b. warehouses that serve as distribution centers for
8 retail or wholesale businesses shall be required to
9 distribute forty percent (40%) of inventory to out-of-
10 state locations, and
- 11 c. adjustment and collection services activities defined
12 or classified in the NAICS Manual under U.S. Industry
13 No. 561440 shall be required to have seventy-five
14 percent (75%) of loans to be serviced made by out-of-
15 state debtors;

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

- 18 a. one hundred twenty-five percent (125%) of the average
19 county wage of small employers located in that county
20 as that percentage is determined by the Department of
21 Commerce based on the most recent wage and employment
22 data from the Oklahoma Employment Security Commission
23 for the county in which the new direct jobs are
24 located. For purposes of this subparagraph, health

1 care premiums paid by the applicant for individuals in
2 new direct jobs shall be included in the annualized
3 wage, or

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

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

18 (1) according to the most recent annual determination
19 by the Oklahoma Employment Security Commission, a
20 county unemployment rate more than ten percent
21 (10%) higher than the state unemployment rate,
22 and
23
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. Has a basic health benefit plan which, as determined by the
5 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. 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. 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 period.
23 The Tax Commission may require the qualified establishment to submit
24 additional information as may be necessary to administer the

1 provisions of the Small Employer Quality Jobs Incentive Act. The
2 approved establishment shall report to the Tax Commission quarterly
3 to show its continued eligibility for incentive payments, as
4 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 period as long as the
9 establishment retains its eligibility and within the limitations of
10 the Small Employer Quality Jobs Incentive Act which existed at the
11 time of such approval. Any establishment which has been approved
12 for incentive payments prior to July 1, 2002, shall continue to
13 receive such payments pursuant to the laws as they existed prior to
14 July 1, 2002, for any period of time of the original five-year
15 period for such payments remaining after July 1, 2002.

16 E. For any contract executed by an establishment on or after
17 the effective date of this act, five percent (5%) of the quarterly
18 incentive payment amount shall be transferred by the Oklahoma Tax
19 Commission to the Quick Action Closing Fund.

20 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3914, as
21 last amended by Section 24, Chapter 4, O.S.L. 2014 (68 O.S. Supp.
22 2017, Section 3914), is amended to read as follows:

23 Section 3914. A. Except for the payment amount required by
24 subsection E of this section, an establishment which meets the

1 qualifications specified in the 21st Century Quality Jobs Incentive
2 Act may receive quarterly incentive payments for a ten-year period
3 from the Oklahoma Tax Commission pursuant to the provisions of this
4 act, as verified by the Tax Commission, in an amount equal to:

5 1. The gross payroll multiplied by the initial net benefit rate
6 until such time as the establishment creates ten new direct jobs; or

7 2. The gross payroll multiplied by the fulfillment net benefit
8 rate after such time as the establishment created and maintains ten
9 new direct jobs.

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

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

21 1. Be engaged in a basic industry as defined in the 21st
22 Century Quality Jobs Incentive Act;

23 2. Will hire at least ten full-time employees in this state
24 within twelve (12) quarters of the date of application;

1 3. Will pay the individuals it employs in new direct jobs an
2 average annualized wage which equals or exceeds three hundred
3 percent (300%) of the average county wage for the county in which
4 the applicant is located as that percentage is determined by the
5 Department of Commerce based on the most recent U.S. Department of
6 Commerce data. For purposes of this paragraph, health care premiums
7 paid by the applicant for individuals in new direct jobs shall not
8 be included in the annualized wage. Provided, no average wage
9 requirement shall exceed Ninety-four Thousand Dollars (\$94,000.00)
10 in any county. This maximum wage threshold shall be indexed and
11 modified from time to time based on the latest Consumer Price Index
12 year-to-date percent change release as of the date of the annual
13 average county wage data release from the Bureau of Economic
14 Analysis of the U.S. Department of Commerce;

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

20 5. Has not received incentive payments under the Small Employer
21 Quality Jobs Program Act, the Saving Quality Jobs Act or the Former
22 Military Facility Development Act; and

23 6. Is not qualified for approval of an application for
24 incentive payments under the Small Employer Quality Jobs Program

1 Act, the Saving Quality Jobs Act or the Former Military Facility
2 Development 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 contract 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 ten-year period. The
10 Tax Commission may require the qualified establishment to submit
11 additional information as may be necessary to administer the
12 provisions of this act. The approved establishment shall report to
13 the Tax Commission quarterly to show its continued eligibility for
14 incentive payments, as provided in Section 3905 of this title.
15 Establishments may be audited by the Tax Commission to verify such
16 eligibility. Once the establishment is approved, an agreement shall
17 be deemed to exist between the establishment and the State of
18 Oklahoma, requiring incentive payments to be made for a ten-year
19 period as long as the establishment retains its eligibility and
20 within the limitations of this act as it existed at the time of such
21 approval.

22 E. For any contract executed by an establishment on or after
23 the effective date of this act, five percent (5%) of the quarterly
24

1 incentive payment amount shall be transferred by the Oklahoma Tax
2 Commission to the Quick Action Closing Fund.

3 SECTION 5. This act shall become effective July 1, 2018.

4 SECTION 6. It being immediately necessary for the preservation
5 of the public peace, health or 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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