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February 28, 2018

COMMITTEE SUBSTITUTE  
FOR

SENATE BILL NO. 923

By: Thompson of the Senate

and

Osborn (Leslie) of the  
House

[ Small Employer Quality Jobs Incentive Act -  
incentive payments - requirements - effective date ]

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 3904, as amended by Section 28, Chapter 227, O.S.L. 2013 (68 O.S. Supp. 2017, Section 3904), is amended to read as follows:

Section 3904. A. 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.

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

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

12 1. Be engaged in a basic industry;

13 2. Has no more than ~~ninety~~ five hundred (500) full-time  
14 employees in this state on the date of application nor an average of  
15 more than ~~ninety~~ five hundred (500) full-time employees in this  
16 state during the four calendar quarters immediately preceding the  
17 date of application;

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

22 a. if the establishment is located in a municipality with  
23 a population less than three thousand five hundred  
24 (3,500) persons, as determined by the Department of

1 Commerce based on the most recent U.S. Department of  
2 Commerce data, or if the establishment is located in  
3 an unincorporated area and the largest municipality  
4 within twenty (20) miles of the establishment is such  
5 a municipality, ~~five~~ new direct jobs equal to five  
6 percent (5%) of the company's full-time employment at  
7 the date of application,

8 b. if the establishment is located in a municipality with  
9 a population of three thousand five hundred (3,500)  
10 persons or more but less than seven thousand (7,000)  
11 persons, as determined by the Department of Commerce  
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 municipality  
15 within twenty (20) miles of the establishment is such  
16 a municipality, ~~ten~~ new direct jobs equal to seven and  
17 one-half percent (7.5%) of the company's full-time  
18 employment at the date of the application, and

19 c. if the establishment is located in a municipality with  
20 a population of seven thousand (7,000) persons or  
21 more, as determined by the Department of Commerce  
22 based on the most recent U.S. Department of Commerce  
23 data, or if the establishment is located in an  
24 unincorporated area and the largest municipality

1           within twenty (20) miles of the establishment is such  
2           a municipality, ~~fifteen~~ new direct jobs equal to ten  
3           percent (10%) of the company's full-time employment at  
4           the date of application.

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

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

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

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 SECTION 2. This act shall become effective November 1, 2018.

17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
18 February 28, 2018 - DO PASS AS AMENDED  
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