

An Act

ENROLLED HOUSE
BILL NO. 2860

By: Wallace of the House

and

Thompson of the Senate

An Act relating to revenue and taxation; enacting the Oklahoma Remote Quality Jobs Incentive Act; stating legislative intent; defining terms; providing for payment of incentive amounts; providing for computation of incentive payment amounts; prescribing procedures for applications and incentive payments; imposing restriction on eligibility dates for projects; imposing requirements related to payment of average annualized wages; providing for cost/benefit analysis; providing for computation of net benefit rate; providing for computation of incentive payment amounts; prescribing procedures related to claims filed with the Oklahoma Tax Commission; authorizing audit; providing for continued incentive payments; providing exception; creating the Oklahoma Remote Quality Jobs Incentive Payment Fund; providing for deposit of income tax revenues; prescribing method for determining deposit; requiring verification of payroll; providing for termination of incentive payments under certain conditions; providing for incentive payments to resume; prohibiting payment of incentives in excess of certain amount; prohibiting participation in designated incentives based upon payment of incentives pursuant to this act; requiring promulgation of rules; prescribing penalties for false statements; providing for punishment as felony; requiring repayment of incentive amounts; requiring Oklahoma Department of Commerce to prepare report; requiring periodic submission of report; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Revenue and taxation

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4501 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Remote Quality Jobs Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4502 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to attract growth industries and sectors that employ remote workers to Oklahoma through a policy of rewarding businesses with a highly skilled, knowledge-based workforce;

2. The Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and

3. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4503 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Remote Quality Jobs Incentive Act:

1. "Basic industry" means an establishment that attracts remote workers to the state whose purpose is to increase the state's population and who may receive rebates on the remote workers; provided, that the remote workers meet the wage and health insurance

requirements in the state and provide evidence of such to the proxy establishment;

2. "New direct job" shall include full-time-equivalent employment in this state of remote workers who are employed by an establishment other than the proxy establishment which has qualified to receive incentive payments for attracting remote workers to the state. Such jobs held by remote workers did not exist in this state prior to the date of approval by the Oklahoma Department of Commerce of the application of the proxy establishment. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to such approval;

3. "Proxy establishment" means:

a. a public trust which:

- (1) is organized and existing under Section 176 of Title 60 of the Oklahoma Statutes for the benefit of a geographic area which includes a city or county or some combination thereof, and
- (2) benefits a geographic area where new direct jobs which meet the requirements of the Oklahoma Remote Quality Jobs Incentive Act are created by an establishment, other than the proxy establishment, or

b. an establishment which facilitates the attraction of remote workers to the State of Oklahoma;

4. "Remote worker" refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved work site other than the location from which the employee would otherwise work, which shall not be located within the physical boundaries of the State of Oklahoma. The remote worker should not have lived in the State of Oklahoma in the previous twelve (12) months;

5. "Estimated direct state benefits" means the tax revenues projected by the Department to accrue to the state as a result of new direct jobs;

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

- a. the costs of education of new state resident children,
- 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;

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

8. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll, and shall not exceed five percent (5%).

B. A proxy establishment shall be required to obtain from remote workers proof of basic health benefits plans for the individuals it includes in an application. The proxy establishment shall submit the information to the Oklahoma Department of Commerce and shall ensure that the basic health benefits plans consist of the following elements or elements substantially equivalent thereto:

1. Not more than fifty percent (50%) of the premium shall be paid by the employee;

2. Coverage for basic hospital care;
3. Coverage for physician care;
4. Coverage for mental health care;
5. Coverage for substance abuse treatment;
6. Coverage for prescription drugs; and
7. Coverage for prenatal care.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4504 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A proxy establishment that facilitates the attraction of remote workers to the State of Oklahoma which meets the qualifications specified in the Oklahoma Remote Quality Jobs Incentive Act may receive quarterly incentive payments for a ten-quarter period. The amount of such payments shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to qualify to receive incentive payments as authorized by the Oklahoma Remote Quality Jobs Incentive Act, a proxy establishment shall be required to:

1. For proxy establishments located in counties with total population less than five hundred thousand (500,000):

- a. have an annual gross payroll for new direct jobs projected by the Oklahoma Department of Commerce to equal or exceed Five Hundred Thousand Dollars (\$500,000.00) within one (1) year of the first complete calendar quarter following the start date, and
- b. have a number of full-time-equivalent employees working an average of thirty (30) or more hours per week in the new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs; or

2. For proxy establishments in counties with total population exceeding five hundred thousand (500,000):

- a. have an annual gross payroll for new direct jobs projected by the Oklahoma Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within one (1) year of the first complete calendar quarter following the start date, and
- b. have a number of full-time-equivalent employees working an average of thirty (30) or more hours per

week in the new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

C. In order to receive incentive payments, a proxy establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain remote workers, the companies that they presently work for, and other such information as may be required by the Department to determine if the applicant is qualified. A proxy establishment may apply for an effective date for a project, which shall not be more than twenty-four (24) months from the date the application is submitted to the Department.

D. In order to qualify to receive incentive payments as authorized by the Oklahoma Remote Quality Jobs Incentive Act, in addition to other qualifications specified herein, the proxy establishment shall be required to include remote workers whose average annualized wage equals or exceeds the average wage requirements specified in Section 3604 of Title 68 of the Oklahoma Statutes.

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

F. If the applicant is determined to be qualified by the Department, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-quarter period beginning with the first complete calendar quarter following the start date and to estimate the amount of gross payroll for a ten-quarter period beginning with the first complete calendar quarter following the start date. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits or exceed the cumulative payments made by a proxy establishment to remote workers.

G. Upon approval of such an application, the Department shall notify the Tax Commission and shall provide it with a copy of the contract and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such

additional information as may be necessary to administer the provisions of the Oklahoma Remote Quality Jobs Incentive Act. The approved proxy establishment shall file quarterly claims with the Tax Commission and shall continue to file such quarterly claims during the ten-quarter incentive period to show its continued eligibility for incentive payments, as provided in Section 6 of this act, or until it is no longer qualified to receive incentive payments. The proxy establishment may be audited by the Tax Commission to verify such eligibility. Once the proxy establishment is approved, an agreement shall be deemed to exist between the proxy establishment and the State of Oklahoma requiring the continued incentive payment to be made as long as the proxy establishment retains its eligibility as defined in and established pursuant to this section and Sections 3 and 5 of this act and within the limitations contained in the Oklahoma Remote Quality Jobs Incentive Act, which existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4505 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Oklahoma Remote Quality Jobs Incentive Payment Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying the net benefit rate provided by the Oklahoma Department of Commerce by the gross payroll as determined pursuant to the provisions of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Remote Quality Jobs Incentive Act. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4506 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of the first complete calendar quarter following the start date, the proxy establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct

jobs of remote workers for the proxy establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the proxy establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the proxy establishment as may be necessary or may request the proxy establishment to revise its claim. A proxy establishment may file for an extension of the initial filing date with the Oklahoma Department of Commerce. Any such extension shall be based solely upon an extraordinary adverse business circumstance which prevented the proxy establishment from attracting the remote workers in the new direct jobs as projected. If a proxy establishment fails to file claims as required by this section, it shall forfeit the right to receive any incentive payments after two (2) years from the start date. If an establishment has filed at least one claim pursuant to this section but fails to file another claim within two (2) years of the most recent claim, the Tax Commission, after consulting with the Department of Commerce, may dismiss the establishment from the program, forfeiting the establishment's right to receive incentive payments based on that contract.

B. If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 4 of this act within twelve (12) months of the start date, or does not equal or exceed the applicable total required by Section 4 of this act at any other time during the ten-quarter period after the start date, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in Section 4 of this act. If a proxy establishment fails to achieve the required gross payroll within twelve (12) months of the start date, the proxy establishment shall not make a new or renewal application for incentive payments authorized pursuant to the Oklahoma Remote Quality Jobs Incentive Act for a period of twelve (12) months from the last day of the last month of the ten-quarter period during which the required gross payroll amount was not achieved.

C. If the average annualized wage required for a proxy establishment does not equal or exceed the amount specified in paragraph 1 or 2 of subsection F of Section 3604 of Title 68 of the Oklahoma Statutes during any calendar quarter, the incentive payments shall not be made and shall not be resumed until such time as such requirements are met.

D. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits or exceed the cumulative payments made by a proxy establishment to remote workers.

E. The proxy establishment shall be responsible for collecting payroll statements or other such documentation of withholding taxes paid to the State of Oklahoma from remote workers and shall submit that information to the Oklahoma Tax Commission.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4507 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified proxy establishment receives an incentive payment pursuant to the provisions of this act, neither the qualified proxy establishment nor the companies associated with the remote workers shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Section 3603 of Title 68 of the Oklahoma Statutes (Oklahoma Quality Jobs Program Act);

2. Section 3901 of Title 68 of the Oklahoma Statutes (Small Employer Quality Jobs Incentive Act);

3. Section 3911 of Title 68 of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act); or

4. Paragraphs 16 and 17 of Section 1357 of Title 68 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4508 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce and the Oklahoma Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4509 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4510 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce shall prepare triennially a report which shall include, but not be limited to, documentation of the new direct jobs created under the Oklahoma Remote Quality Jobs Incentive Act and a fiscal analysis of the costs and benefits of this act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor of this state no later than March 1, 2023, and every three (3) years thereafter. The report may be used for the purpose of determining whether to continue or sunset the Oklahoma Remote Quality Jobs Incentive Act.

SECTION 11. This act shall become effective July 1, 2021.

SECTION 12. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 3rd day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____