

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2860

By: Wallace

AS INTRODUCED

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 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.

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

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

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

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

10 It is the intent of the Legislature that:

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

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

20 3. Nothing herein shall be construed to constitute a guarantee
21 or assumption by the State of Oklahoma of any debt of any
22 individual, company, corporation or association nor to authorize the
23 credit of the State of Oklahoma to be given, pledged or loaned to
24 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 may receive rebates on the remote workers provided that the remote workers meet the wage and health insurance requirements in 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

1 of a geographic area which includes a city or
2 county or some combination thereof, and

3 (2) benefits a geographic area where new direct jobs
4 which meet the requirements of the Oklahoma
5 Remote Quality Jobs Incentive Act are created by
6 an establishment, other than the proxy
7 establishment, or

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

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

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

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

24 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 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

1 7. Coverage for prenatal care.

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

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

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

16 1. Have an annual gross payroll for new direct jobs projected
17 by the Oklahoma Department of Commerce to equal or exceed One
18 Million Five Hundred Thousand Dollars (\$1,500,000.00) within one (1)
19 year of the first complete calendar quarter following the start
20 date; and

21 2. Have a number of full-time-equivalent employees working an
22 average of thirty (30) or more hours per week in the new direct jobs
23 equal to or in excess of eighty percent (80%) of the total number of
24 new direct jobs.

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

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

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

19 F. If the applicant is determined to be qualified by the
20 Department, the Department shall conduct a cost/benefit analysis to
21 determine the estimated net direct state benefits and the net
22 benefit rate applicable for a ten-quarter period beginning with the
23 first complete calendar quarter following the start date and to
24 estimate the amount of gross payroll for a ten-quarter period

1 beginning with the first complete calendar quarter following the
2 start date. In conducting such cost/benefit analysis, the
3 Department shall consider quantitative factors, such as the
4 anticipated level of new tax revenues to the state along with the
5 added cost to the state of providing services, and such other
6 criteria as deemed appropriate by the Department. In no event shall
7 incentive payments, cumulatively, exceed the estimated net direct
8 state benefits or exceed the cumulative payments made by a proxy
9 establishment to remote workers.

10 G. Upon approval of such an application, the Department shall
11 notify the Tax Commission and shall provide it with a copy of the
12 contract and the results of the cost/benefit analysis. The Tax
13 Commission may require the qualified establishment to submit such
14 additional information as may be necessary to administer the
15 provisions of the Oklahoma Remote Quality Jobs Program Act. The
16 approved proxy establishment shall file quarterly claims with the
17 Tax Commission and shall continue to file such quarterly claims
18 during the ten-quarter incentive period to show its continued
19 eligibility for incentive payments, as provided in Section 6 of this
20 act, or until it is no longer qualified to receive incentive
21 payments. The proxy establishment may be audited by the Tax
22 Commission to verify such eligibility. Once the proxy establishment
23 is approved, an agreement shall be deemed to exist between the proxy
24 establishment and the State of Oklahoma requiring the continued

1 incentive payment to be made as long as the proxy establishment
2 retains its eligibility as defined in and established pursuant to
3 this section and Sections 3 and 5 of this act and within the
4 limitations contained in the Oklahoma Remote Quality Jobs Program
5 Act, which existed at the time of such approval.

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

9 There is hereby created within the State Treasury a special fund
10 for the Oklahoma Tax Commission to be designated the "Oklahoma
11 Remote Quality Jobs Incentive Payment Fund". The Oklahoma Tax
12 Commission is hereby authorized and directed to withhold a portion
13 of the taxes levied and collected pursuant to Section 2355 of Title
14 68 of the Oklahoma Statutes for deposit into the fund. The amount
15 deposited shall equal the sum of an amount determined by multiplying
16 the net benefit rate provided by the Oklahoma Department of Commerce
17 by the gross payroll as determined pursuant to the provisions of
18 this act. All of the amounts deposited in such fund shall be used
19 and expended by the Tax Commission solely for the purposes and in
20 the amounts authorized by the Oklahoma Remote Quality Jobs Incentive
21 Act. The liability of the State of Oklahoma to make the incentive
22 payments under this act shall be limited to the balance contained in
23 the fund created by this section.

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

4 A. As soon as practicable after the end of the first complete
5 calendar quarter following the start date, the proxy establishment
6 shall file a claim for the payment with the Oklahoma Tax Commission
7 and shall specify the actual number and gross payroll of new direct
8 jobs of remote workers for the proxy establishment for the calendar
9 quarter. The Tax Commission shall verify the actual gross payroll
10 for new direct jobs for the proxy establishment for such calendar
11 quarter. If the Tax Commission is not able to provide such
12 verification utilizing all available resources, the Tax Commission
13 may request such additional information from the proxy establishment
14 as may be necessary or may request the proxy establishment to revise
15 its claim. A proxy establishment may file for an extension of the
16 initial filing date with the Oklahoma Department of Commerce. Any
17 such extension shall be based solely upon an extraordinary adverse
18 business circumstance which prevented the proxy establishment from
19 attracting the remote workers in the new direct jobs as projected.
20 If a proxy establishment fails to file claims as required by this
21 section, it shall forfeit the right to receive any incentive
22 payments after two (2) years from the start date. If an
23 establishment has filed at least one claim pursuant to this section
24 but fails to file another claim within two (2) years of the most

1 recent claim, the Tax Commission, after consulting with the
2 Department of Commerce, may dismiss the establishment from the
3 program, forfeiting the establishment's right to receive incentive
4 payments based on that contract.

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

21 C. If the average annualized wage required for a proxy
22 establishment does not equal or exceed the amount specified in
23 paragraph 1 or 2 of subsection F of Section 3604 of Title 68 of the
24 Oklahoma Statutes during any calendar quarter, the incentive

1 payments shall not be made and shall not be resumed until such time
2 as such requirements are met.

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

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

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

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

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

22 2. Section 3901 of Title 68 of the Oklahoma Statutes (Small
23 Employer Quality Jobs Incentive Act);
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1 3. Section 3911 of Title 68 of the Oklahoma Statutes (21st
2 Century Quality Jobs Incentive Act); or

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

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

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

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

15 Any person making an application, claim for payment or any
16 report, return, statement or other instrument or providing any other
17 information pursuant to the provisions of this act who willfully
18 makes a false or fraudulent application, claim, report, return,
19 statement, invoice or other instrument or who willfully provides any
20 false or fraudulent information, or any person who willfully aids or
21 abets another in making such false or fraudulent application, claim,
22 report, return, statement, invoice or other instrument or who
23 willfully aids or abets another in providing any false or fraudulent
24 information, upon conviction, shall be guilty of a felony punishable

1 by the imposition of a fine of not less than One Thousand Dollars
2 (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00),
3 or imprisonment in the State Penitentiary for not less than two (2)
4 years and not more than five (5) years, or by both such fine and
5 imprisonment. Any person convicted of a violation of this section
6 shall be liable for the repayment of all incentive payments which
7 were paid to the establishment. Interest shall be due on such
8 payments at the rate of ten percent (10%) per annum.

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

12 The Oklahoma Department of Commerce shall prepare triennially a
13 report which shall include, but not be limited to, documentation of
14 the new direct jobs created under the Oklahoma Remote Quality Jobs
15 Program Act and a fiscal analysis of the costs and benefits of the
16 Program to the state. The report shall be submitted to the
17 President Pro Tempore of the Senate, the Speaker of the House of
18 Representatives and the Governor of this state no later than March
19 1, 2023, and every three (3) years thereafter. The report may be
20 used for the purpose of determining whether to continue or sunset
21 the Oklahoma Remote Quality Jobs Program Act.

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

23 SECTION 12. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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