

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3055

By: Steagall

AS INTRODUCED

An Act relating to revenue and taxation; creating the Level Playing Field Quality Jobs Incentive Act; stating legislative intent and providing for certain construction; defining terms; providing for five-year incentive payment for establishments meeting certain qualifications; requiring application be made to Oklahoma Department of Commerce and providing for forms and information related thereto; requiring Department to determine if applicant meets certain requirements and stating requirements; requiring that Department notify Oklahoma Tax Commission upon qualifying applicant; providing for additional information; requiring report for continued eligibility to Tax Commission; providing for audit; providing for certain agreement; stating procedure for filing reports to claim incentive payment; providing for determination that requirements have been met and for incentive payments; creating special fund for certain purpose; limiting liability of state to fund balance; providing for promulgation of rules; providing penalty; deeming establishment receiving incentive payment and its contractors and subcontractors ineligible to receive certain tax credits and exemptions; requiring certain analysis and 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 3951 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 "Level Playing  
6 Field Quality Jobs Incentive Act".

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 3952 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 support the creation and preservation of quality jobs, particularly  
13 by small businesses, in basic industries in this state;

14 2. The incentives provided be directly related to quality jobs  
15 created as a result of a business remaining, locating, or expanding  
16 in this state;

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

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

3 SECTION 3. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3953 of Title 68, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Level Playing Field Quality Jobs Incentive Act:

7 1. "Basic industry" means a basic industry as defined under the  
8 Oklahoma Quality Jobs Program Act in divisions (1) through (9) of  
9 subparagraph a of paragraph 1 of subsection A of Section 3603 of  
10 Title 68 of the Oklahoma Statutes, excluding those activities  
11 described in division (10) of subparagraph a of paragraph 1 of  
12 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes.  
13 Provided, for the purposes of the Level Playing Field Quality Jobs  
14 Incentive Act, the determination required by subdivision (b) of  
15 division (7) or division (8) of subparagraph a of paragraph 1 of  
16 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes  
17 shall be made by the Oklahoma Department of Commerce and not the  
18 Incentive Approval Committee;

19 2. "Establishment" means any business, no matter what legal  
20 form, including, but not limited to, a sole proprietorship,  
21 partnership, corporation, or limited liability corporation and which  
22 is in competition with a regional market competitor;

23 3. "Estimated direct state benefits" means the tax revenues  
24 projected by the Oklahoma Department of Commerce to accrue to the  
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1 state as a result of new direct jobs or the preservation of existing  
2 jobs;

3 4. "Estimated direct state costs" means the costs projected by  
4 the Department to accrue to the state as a result of qualified jobs  
5 or the preservation of existing jobs. Such costs shall include, but  
6 not be limited to:

7 a. the costs of education of state resident children,

8 b. the costs of public health, public safety, and  
9 transportation services to be provided to state  
10 residents,

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

13 d. the costs of other state services;

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

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

20 7. "Gross taxable payroll" means wages, as defined in Section  
21 2385.1 of Title 68 of the Oklahoma Statutes, for qualified jobs;

22 8. "Net benefit rate" means the estimated net direct state  
23 benefits computed as a percentage of gross payroll; provided:  
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1           a.     the net benefit rate may be variable and shall not  
2                 exceed five percent (5%), and

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

5           9.    "Qualified job" means full-time employment which did not  
6    exist in this state prior to the date of approval, or which did  
7    exist in the state prior to the date of approval if the job was  
8    essential to the operation of the establishment, as determined by  
9    the Oklahoma Department of Commerce, of an application made pursuant  
10   to the Level Playing Field Quality Jobs Incentive Act. A job shall  
11   be deemed to exist in this state prior to approval of an application  
12   if the activities and functions for which the particular job exists  
13   have been ongoing at any time within six (6) months prior to such  
14   approval; and

15          10.   "Regional market competitor" means an establishment that  
16   is in direct or indirect competition with an establishment which is  
17   or which becomes eligible for incentive payments pursuant to the  
18   provisions of this act if such regional market competitor is  
19   eligible to receive or is receiving incentive payments pursuant to  
20   the Oklahoma Quality Jobs Program Act, the Small Employer Quality  
21   Jobs Incentive Act, the Former Military Facility Quality Jobs Act,  
22   or the 21st Century Quality Jobs Incentive Act.

1       SECTION 4.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3954 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4       A. An establishment which meets the qualifications specified in  
5 the Level Playing Field Quality Jobs Incentive Act may receive  
6 quarterly incentive payments for a seven-year period from the  
7 Oklahoma Tax Commission pursuant to the provisions of the Level  
8 Playing Field Quality Jobs Incentive Act in an amount equal to the  
9 net benefit rate multiplied by the actual gross taxable payroll of  
10 qualified jobs as verified by the Tax Commission.

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

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

- 22       1. Be engaged in a basic industry;
- 23       2. Has no more than five hundred full-time employees in this  
24 state on the date of application nor an average of more than five

1 hundred full-time employees in this state during the four calendar  
2 quarters immediately preceding the date of application;

3 3. Has a projected minimum employment, as determined by the  
4 Department, of qualified jobs within twenty-four (24) months of the  
5 date of application, as follows:

- 6 a. if the establishment is located in a municipality with  
7 a population less than three thousand five hundred  
8 (3,500) persons, as determined by the Department of  
9 Commerce based on the most recent U.S. Department of  
10 Commerce data, or if the establishment is located in  
11 an unincorporated area and the largest municipality  
12 within twenty (20) miles of the establishment is such  
13 a municipality, qualified jobs equal to the greater of  
14 five (5) jobs or five percent (5%) of the company's  
15 full-time employment at the date of application,  
16 b. if the establishment is located in a municipality with  
17 a population of three thousand five hundred (3,500)  
18 persons or more but less than seven thousand (7,000)  
19 persons, as determined by the Department of Commerce  
20 based on the most recent U.S. Department of Commerce  
21 data, or if the establishment is located in an  
22 unincorporated area and the largest municipality  
23 within twenty (20) miles of the establishment is such  
24 a municipality, qualified jobs equal to the greater of  
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1           ten (10) jobs or seven and one-half percent (7.5%) of  
2           the company's full-time employment at the date of the  
3           application, and

4           c.   if the establishment is located in a municipality with  
5           a population of seven thousand (7,000) persons or  
6           more, as determined by the Department of Commerce  
7           based on the most recent U.S. Department of Commerce  
8           data, or if the establishment is located in an  
9           unincorporated area and the largest municipality  
10          within twenty (20) miles of the establishment is such  
11          a municipality, qualified jobs equal to the greater of  
12          fifteen (15) jobs or ten percent (10%) of the  
13          company's full-time employment at the date of  
14          application.

15          Provided, for an establishment engaged in software publishing as  
16          defined or classified in the NAICS Manual under Industry Group No.  
17          5112, data processing, hosting and related services as defined or  
18          classified in the NAICS Manual under Industry Group No. 5182,  
19          computer systems design and related services as defined or  
20          classified in the NAICS Manual under Industry Group No. 5415,  
21          scientific research and development services as defined or  
22          classified in the NAICS Manual under Industry Group No. 5417,  
23          medical and diagnostic laboratories as defined or classified in the  
24          NAICS Manual under Industry Group No. 6215 or testing laboratories  
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1 as defined or classified in the NAICS Manual under U.S. Industry No.  
2 541380, the projected minimum employment requirements of this  
3 paragraph must be achieved within thirty-six (36) months of the date  
4 of application;

5 4. Has or will have within twenty-four (24) months of the date  
6 of application, as determined by the Department, sales of at least  
7 thirty-five percent (35%) for the first two (2) years and  
8 subsequently sixty percent (60%) of its total sales to out-of-state  
9 customers or buyers, to in-state customers or buyers if the product  
10 or service is resold by the purchaser to an out-of-state customer or  
11 buyer for ultimate use, or to the federal government, except that:

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

1        5. Will pay the individuals it employs in qualified jobs an  
2 average annualized wage which equals or exceeds:

3            a. one hundred twenty-five percent (125%) of the average  
4 county wage of small employers located in that county  
5 as that percentage is determined by the Department of  
6 Commerce based on the most recent wage and employment  
7 data from the Oklahoma Employment Security Commission  
8 for the county in which the qualified jobs are  
9 located. For purposes of this subparagraph, health  
10 care premiums paid by the applicant for individuals in  
11 qualified jobs shall be included in the annualized  
12 wage, or

13           b. one hundred ten percent (110%) of the average county  
14 wage of small employers located in that county as that  
15 percentage is determined by the Department of Commerce  
16 based upon the most recent wage and employment data  
17 from the Oklahoma Employment Security Commission for  
18 the county in which the qualified jobs are located.  
19 For purposes of this subparagraph, health care  
20 premiums paid by the applicant for individuals in  
21 qualified jobs shall not be included in the annualized  
22 wage, or

23           c. one hundred percent (100%) of the average county wage,  
24 excluding health care premiums paid by the applicant  
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1 for individuals in qualified jobs if the county in  
2 which the qualified jobs are located has:

3 (1) according to the most recent annual determination  
4 by the Oklahoma Employment Security Commission, a  
5 county unemployment rate more than ten percent  
6 (10%) higher than the state unemployment rate,  
7 and

8 (2) according to the most recent United States Census  
9 Bureau Data, a county personal poverty rate above  
10 fifteen percent (15%);

11 6. Has a basic health benefit plan which, as determined by the  
12 Department, meets the elements established under divisions (1)  
13 through (7) of subparagraph b of paragraph 1 of subsection A of  
14 Section 3603 of Title 68 of the Oklahoma Statutes and which will be  
15 offered to individuals within twelve (12) months of employment in a  
16 qualified job; and

17 7. Is not receiving incentive payments under the Oklahoma  
18 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former  
19 Military Facility Development Act.

20 D. The Oklahoma Department of Commerce shall determine if an  
21 applicant is qualified to receive the incentive payment. Upon  
22 qualifying the applicant, the Department shall notify the Tax  
23 Commission and shall provide it with a copy of the application, and  
24 approval which shall provide the number of persons employed by the  
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1 applicant upon the date of approval and the maximum total incentives  
2 which may be paid to the applicant during the seven-year period.  
3 The Tax Commission may require the qualified establishment to submit  
4 additional information as may be necessary to administer the  
5 provisions of the Level Playing Field Quality Jobs Incentive Act.  
6 The approved establishment shall report to the Tax Commission  
7 quarterly to show its continued eligibility for incentive payments,  
8 as provided in Section 4 of this act. Establishments may be audited  
9 by the Tax Commission to verify such eligibility. Once the  
10 establishment is approved, an agreement shall be deemed to exist  
11 between the establishment and the State of Oklahoma, requiring  
12 incentive payments to be made for a seven-year period as long as the  
13 establishment retains its eligibility and within the limitations of  
14 the Level Playing Field Quality Jobs Incentive Act which existed at  
15 the time of such approval.

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

20 SECTION 5. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3955 of Title 68, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. 1. Beginning with the first complete calendar quarter after  
24 the application of the establishment is approved by the Oklahoma  
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1 Department of Commerce, the establishment shall begin filing  
2 quarterly reports with the Oklahoma Tax Commission that specify the  
3 actual number and individual gross taxable payroll of qualified jobs  
4 for the establishment and such other information as required by the  
5 Tax Commission. In no event shall the first claim for incentive  
6 payments be filed later than three (3) years from the start date  
7 designated by the Department. The Tax Commission shall verify the  
8 actual individual gross taxable payroll for new qualified jobs. If  
9 the Tax Commission is not able to provide such verification  
10 utilizing all available resources, the Tax Commission may request  
11 additional information from the establishment as may be necessary or  
12 may request the establishment to revise its reports.

13 The establishment shall continue filing such reports during the  
14 seven-year incentive period or until it is no longer qualified to  
15 receive incentive payments. Such reports shall constitute a claim  
16 for quarterly incentive payments by the establishment.

17 2. Upon receipt of a report for the initial calendar quarter of  
18 the incentive period and for each subsequent calendar quarter  
19 thereafter, the Tax Commission shall determine if the establishment  
20 has met the following requirements:

- 21 a. created and/or maintained the minimum number of  
22 qualified jobs as specified in paragraph 3 of  
23 subsection C of Section 4 of this act, and  
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1           b.   paid the individuals it employed in qualified jobs an  
2               annualized wage which equaled or exceeded the  
3               applicable percentage of the average county wage as  
4               that percentage was determined by the Oklahoma  
5               Department of Commerce upon approval of the  
6               application.

7           3.   Upon determining that an establishment has met the  
8               requirements of paragraph 2 of this subsection for the initial  
9               calendar quarter of the incentive period, the Tax Commission shall  
10              issue a warrant to the establishment in an amount which shall be  
11              equal to the net benefit rate multiplied by the amount of gross  
12              taxable payroll of qualified jobs actually paid by the  
13              establishment.

14           B.   Except as provided in subsection C of this section, the  
15               quarterly incentive payment provided for in subsection A of this  
16               section shall be allowed in each of the twenty-seven subsequent  
17               calendar quarters.

18           C.   1.   An establishment which does not meet the requirements of  
19               paragraph 2 of subsection A of this section within twenty-four (24)  
20               months of the date of its application, shall be ineligible to  
21               receive any incentive payments pursuant to its application and  
22               approval.

23           2.   An establishment which at any time during the twenty-seven  
24               subsequent calendar quarters does not meet the requirements of  
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1 paragraph 2 of subsection A of this section shall be ineligible to  
2 receive an incentive payment during the calendar quarter in which  
3 such requirements are not met.

4 SECTION 6. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 3956 of Title 68, unless there  
6 is created a duplication in numbering, reads as follows:

7 There is hereby created within the State Treasury a special fund  
8 for the Oklahoma Tax Commission to be designated the "Level Playing  
9 Field Quality Jobs Incentive Payment Fund". The Tax Commission is  
10 hereby authorized and directed to withhold a portion of the taxes  
11 levied and collected pursuant to Section 2355 of Title 68 of the  
12 Oklahoma Statutes for deposit into the fund. The amount deposited  
13 shall equal the sum estimated by the Tax Commission to be sufficient  
14 to pay incentive payments claimed pursuant to the provisions of  
15 Section 5 of this act. All of the amounts deposited in such fund  
16 shall be used and expended by the Tax Commission solely for the  
17 purposes and in the amounts authorized by the Level Playing Field  
18 Quality Jobs Incentive Act. The liability of the State of Oklahoma  
19 to make incentive payments under this act shall be limited to the  
20 balance contained in the fund created by this section.

21 SECTION 7. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 3957 of Title 68, unless there  
23 is created a duplication in numbering, reads as follows:  
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1       The Oklahoma Department of Commerce and the Oklahoma Tax  
2 Commission shall promulgate rules necessary to implement their  
3 respective duties and responsibilities under the provisions of this  
4 act.

5       SECTION 8.       NEW LAW       A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3958 of Title 68, unless there  
7 is created a duplication in numbering, reads as follows:

8       Any person making an application, claim for payment or any  
9 report, return, statement, invoice, or other instrument or providing  
10 any other information pursuant to the provisions of this act who  
11 willfully makes a false or fraudulent application, claim, report,  
12 return, statement, invoice, or other instrument or who willfully  
13 provides any false or fraudulent information, or any person who  
14 willfully aids or abets another in making such false or fraudulent  
15 application, claim, report, return, statement, invoice, or other  
16 instrument or who willfully aids or abets another in providing any  
17 false or fraudulent information, upon conviction, shall be guilty of  
18 a felony. The fine for a violation of this provision shall not be  
19 less than One Thousand Dollars (\$1,000.00) nor more than Fifty  
20 Thousand Dollars (\$50,000.00). Any person convicted of a violation  
21 of this section shall be liable for the repayment of all incentive  
22 payments which were paid to the establishment. Interest shall be  
23 due on such payments at the rate of ten percent (10%) per annum.  
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1       SECTION 9.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3959 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4       Notwithstanding any other provision of law, if a qualified  
5 establishment receives an incentive payment pursuant to the  
6 provisions of this act, neither the qualified establishment nor its  
7 contractors or subcontractors shall be eligible to receive the  
8 credits or exemptions provided for in the following provisions of  
9 law in connection with the activity for which the incentive payment  
10 was received:

- 11       1. Paragraphs 16 and 17 of Section 1357 of this title;
- 12       2. Paragraph 8 of Section 1359 of this title;
- 13       3. Section 2357.4 of this title;
- 14       4. Section 2357.7 of this title;
- 15       5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
- 16       6. Section 2357.22 of this title;
- 17       7. Section 2357.31 of this title;
- 18       8. Section 54003 of this title;
- 19       9. Section 54006 of this title;
- 20       10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
- 21       11. Subsections C and D of Section 2357.59 of this title.

22       SECTION 10.       NEW LAW       A new section of law to be codified  
23 in the Oklahoma Statutes as Section 3960 of Title 68, unless there  
24 is created a duplication in numbering, reads as follows:

1       The Oklahoma Department of Commerce shall prepare triennially a  
2 report which shall include, but not be limited to, documentation of  
3 the new direct jobs created under the Level Playing Field Quality  
4 Jobs Incentive Act and a fiscal analysis of the costs and benefits  
5 of the act to the state. The report shall be submitted to the  
6 President Pro Tempore of the Oklahoma State Senate, the Speaker of  
7 the Oklahoma House of Representatives, and the Governor no later  
8 than March 1, 2028, and every three (3) years thereafter. The  
9 report may be used for the purpose of determining whether to  
10 continue or sunset the Level Playing Field Quality Jobs Incentive  
11 Act.

12       SECTION 11. This act shall become effective July 1, 2024.

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

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