

1 ENGROSSED HOUSE
2 BILL NO. 2536

By: Blancett of the House

3 and

4 Montgomery of the Senate

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6
7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 3904, as last amended by Section
9 1, Chapter 191, O.S.L. 2018 (68 O.S. Supp. 2018,
10 Section 3904), which relates to the Small Employer
11 Quality Jobs Act; modifying reference; providing an
12 effective date; and declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3904, as
15 last amended by Section 1, Chapter 191, O.S.L. 2018 (68 O.S. Supp.
16 2018, Section 3904), is amended to read as follows:

17 Section 3904. A. An establishment which meets the
18 qualifications specified in the Small Employer Quality Jobs
19 Incentive Act may receive quarterly incentive payments for a seven-
20 year period from the Oklahoma Tax Commission pursuant to the
21 provisions of the Small Employer Quality Jobs Incentive Act in an
22 amount equal to the net benefit rate multiplied by the actual gross
23 taxable payroll of new direct jobs as verified by the Tax
24 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 five hundred full-time employees in this
14 state on the date of application nor an average of more than five
15 hundred full-time employees in this state during the four calendar
16 quarters immediately preceding the date of application;

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

21 a. if the establishment is located in a municipality with
22 a population less than three thousand five hundred
23 (3,500) persons, as determined by the Department of
24 Commerce based on the most recent U.S. Department of

- Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, new direct jobs equal to the greater of five (5) jobs or five percent (5%) of the company's full-time employment at the date of application,
- b. if the establishment is located in a municipality with a population of three thousand five hundred (3,500) persons or more but less than seven thousand (7,000) persons, as determined by the Department of Commerce based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, new direct jobs equal to the greater of ten (10) jobs or seven and one-half percent (7.5%) of the company's full-time employment at the date of the application, and
- c. if the establishment is located in a municipality with a population of seven thousand (7,000) persons or more, as determined by the Department of Commerce based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality

1 within twenty (20) miles of the establishment is such
2 a municipality, new direct jobs equal to the greater
3 of fifteen (15) jobs or ten percent (10%) of the
4 company's full-time employment at the date of
5 application.

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

20 4. Has or will have within twelve (12) months of the date of
21 application, or after July 1, 2011, within twenty-four (24) months
22 of the date of application, as determined by the Department, sales
23 of at least ~~seventy-five percent (75%)~~ thirty-five percent (35%) for
24 the first two (2) years and subsequently sixty percent (60%) of its

1 total sales to out-of-state customers or buyers, to in-state
2 customers or buyers if the product or service is resold by the
3 purchaser to an out-of-state customer or buyer for ultimate use, or
4 to the federal government, except that:

5 a. those establishments in the NAICS Manual under the
6 U.S. Industry No. 541710 or 541380 are excused from
7 the ~~seventy-five percent (75%)~~ out-of-state sales
8 requirement,

9 b. warehouses that serve as distribution centers for
10 retail or wholesale businesses shall be required to
11 distribute forty percent (40%) of inventory to out-of-
12 state locations, and

13 c. adjustment and collection services activities defined
14 or classified in the NAICS Manual under U.S. Industry
15 No. 561440 shall be required to have seventy-five
16 percent (75%) of loans to be serviced made by out-of-
17 state debtors;

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

20 a. one hundred twenty-five percent (125%) of the average
21 county wage of small employers located in that county
22 as that percentage is determined by the Department of
23 Commerce based on the most recent wage and employment
24 data from the Oklahoma Employment Security Commission

1 for the county in which the new direct jobs are
2 located. For purposes of this subparagraph, health
3 care premiums paid by the applicant for individuals in
4 new direct jobs shall be included in the annualized
5 wage, or

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

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

20 (1) according to the most recent annual determination
21 by the Oklahoma Employment Security Commission, a
22 county unemployment rate more than ten percent
23 (10%) higher than the state unemployment rate,
24 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 July 1, 2019.

17 SECTION 3. It being immediately necessary for the preservation
18 of the public peace, health or safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.
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1 Passed the House of Representatives the 12th day of March, 2019.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 Presiding Officer of the Senate