

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 13x

By: Thompson (Roger) and Hall
of the Senate

6 and

7 Wallace and Martinez of the
8 House

9
10 COMMITTEE SUBSTITUTE

11 An Act relating to incentive payments; amending 68
12 O.S. 2021, Sections 3604 and 3606, which relate to
13 the Oklahoma Quality Jobs Program Act; modifying
14 payment period for certain industry; updating
15 statutory reference; and providing an effective date.

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

17 SECTION 1. AMENDATORY 68 O.S. 2021, Section 3604, is
18 amended to read as follows:

19 Section 3604. A. Except as otherwise provided in subsection I
20 or subsection L of this section, an establishment which meets the
21 qualifications specified in the Oklahoma Quality Jobs Program Act
22 may receive quarterly incentive payments for a ten-year period from
23 the Oklahoma Tax Commission pursuant to the provisions of the
24 Oklahoma Quality Jobs Program Act; provided, such an establishment

1 defined or classified in the NAICS Manual under U.S. Industry No.
2 711211 (2007 version) may receive quarterly incentive payments for a
3 ~~fifteen-year~~ thirty-year period. The amount of such payments shall
4 be equal to the net benefit rate multiplied by the actual gross
5 payroll of new direct jobs for a calendar quarter as verified by the
6 Oklahoma Employment Security Commission.

7 B. In order to receive incentive payments, an establishment
8 shall apply to the Oklahoma Department of Commerce. The application
9 shall be on a form prescribed by the Department and shall contain
10 such information as may be required by the Department to determine
11 if the applicant is qualified. An establishment may apply for an
12 effective date for a project, which shall not be more than twenty-
13 four (24) months from the date the application is submitted to the
14 Department.

15 C. Except as otherwise provided by subsection D or E of this
16 section, in order to qualify to receive such payments, the
17 establishment applying shall be required to:

- 18 1. Be engaged in a basic industry;
- 19 2. Have an annual gross payroll for new direct jobs projected
20 by the Department to equal or exceed Two Million Five Hundred
21 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
22 complete calendar quarter following the start date; and
- 23 3. Have a number of full-time-equivalent employees subject to
24 the tax imposed by Section 2355 of this title and working an annual

1 average of thirty (30) or more hours per week in new direct jobs
2 located in this state equal to or in excess of eighty percent (80%)
3 of the total number of new direct jobs.

4 D. In order to qualify to receive incentive payments as
5 authorized by the Oklahoma Quality Jobs Program Act, an
6 establishment engaged in an activity described under:

7 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual
8 shall be required to:

9 a. have an annual gross payroll for new direct jobs
10 projected by the Department to equal or exceed One
11 Million Five Hundred Thousand Dollars (\$1,500,000.00)
12 within three (3) years of the first complete calendar
13 quarter following the start date and make, or which
14 will make within one (1) year, at least seventy-five
15 percent (75%) of its total sales, as determined by the
16 Incentive Approval Committee pursuant to the
17 provisions of subsection B of Section 3603 of this
18 title, to out-of-state customers or buyers, to in-
19 state customers or buyers if the product or service is
20 resold by the purchaser to an out-of-state customer or
21 buyer for ultimate use, or to the federal government,
22 unless the annual gross payroll equals or exceeds Two
23 Million Five Hundred Thousand Dollars (\$2,500,000.00)

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1 in which case the requirements for purchase of output
2 provided by this subparagraph shall not apply, and

- 3 b. have a number of full-time-equivalent employees
4 working an average of thirty (30) or more hours per
5 week in new direct jobs equal to or in excess of
6 eighty percent (80%) of the total number of new direct
7 jobs; and

8 2. Division (4) of subparagraph a of paragraph 1 of subsection
9 A of Section 3603 of this title, shall be required to:

- 10 a. have an annual gross payroll for new direct jobs
11 projected by the Department to equal or exceed One
12 Million Five Hundred Thousand Dollars (\$1,500,000.00)
13 within three (3) years of the first complete calendar
14 quarter following the start date, and

- 15 b. have a number of full-time-equivalent employees
16 working an average of thirty (30) or more hours per
17 week in new direct jobs equal to or in excess of
18 eighty percent (80%) of the total number of new direct
19 jobs.

20 E. 1. An establishment which locates its principal business
21 activity within a site consisting of at least ten (10) acres which:

- 22 a. is a federal Superfund removal site,
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1 b. is listed on the National Priorities List established
2 under Section 9605 of Title 42 of the United States
3 Code,

4 c. has been formally deferred to the state in lieu of
5 listing on the National Priorities List, or

6 d. has been determined by the Department of Environmental
7 Quality to be contaminated by any substance regulated
8 by a federal or state statute governing environmental
9 conditions for real property pursuant to an order of
10 the Department of Environmental Quality,

11 shall qualify for incentive payments irrespective of its actual
12 gross payroll or the number of full-time-equivalent employees
13 engaged in new direct jobs.

14 2. In order to qualify for the incentive payments pursuant to
15 this subsection, the establishment shall conduct the activity
16 resulting in at least fifty percent (50%) of its Oklahoma taxable
17 income or adjusted gross income, as determined under Section 2358 of
18 this title, whether from the sale of products or services or both
19 products and services, at the physical location which has been
20 determined not to comply with the federal or state statutes
21 described in this subsection with respect to environmental
22 conditions for real property. The establishment shall be subject to
23 all other requirements of the Oklahoma Quality Jobs Program Act
24 other than the exemptions provided by this subsection.

1 3. In order to qualify for the incentive payments pursuant to
2 this subsection, the entity shall obtain from the Department of
3 Environmental Quality a letter of concurrence that:

4 a. the site designated by the entity does meet one or
5 more of the requirements listed in paragraph 1 of this
6 subsection, and

7 b. the site is being or has been remediated to a level
8 which is consistent with the intended use of the
9 property.

10 In making its determination, the Department of Environmental
11 Quality may rely on existing data and information available to it,
12 but may also require the applying entity to provide additional data
13 and information, as necessary.

14 4. If authorized by the Department of Environmental Quality
15 pursuant to paragraph 3 of this subsection, the entity may utilize a
16 remediated portion of the property for its intended purpose prior to
17 remediation of the remainder of the site, and shall qualify for
18 incentive payments based on employment associated with the portion
19 of the site.

20 F. Except as otherwise provided by subsection G of this
21 section, for applications submitted on and after June 4, 2003, in
22 order to qualify to receive incentive payments as authorized by the
23 Oklahoma Quality Jobs Program Act, in addition to other
24 qualifications specified herein, an establishment shall be required

1 to pay new direct jobs an average annualized wage which equals or
2 exceeds:

3 1. One hundred ten percent (110%) of the average county wage as
4 determined by the Department of Commerce based on the most recent
5 U.S. Department of Commerce data for the county in which the new
6 direct jobs are located. For purposes of this paragraph, health
7 care premiums paid by the applicant for individuals in new direct
8 jobs shall be included in the annualized wage; or

9 2. One hundred percent (100%) of the average county wage as
10 that percentage is determined by the Department of Commerce based
11 upon the most recent U.S. Department of Commerce data for the county
12 in which the new jobs are located. For purposes of this paragraph,
13 health care premiums paid by the applicant for individuals in new
14 direct jobs shall not be included in the annualized wage.

15 Provided, no average wage requirement shall exceed Twenty-five
16 Thousand Dollars (\$25,000.00), in any county. This maximum wage
17 threshold shall be indexed and modified from time to time based on
18 the latest Consumer Price Index year-to-date percent change release
19 as of the date of the annual average county wage data release from
20 the Bureau of Economic Analysis of the U.S. Department of Commerce.

21 G. 1. As used in this subsection, "opportunity zone" means one
22 or more census tracts in which, according to the most recent Federal
23 Decennial Census, at least thirty percent (30%) of the residents
24 have annual gross household incomes from all sources below the

1 poverty guidelines established by the U.S. Department of Health and
2 Human Services. An establishment which is otherwise qualified to
3 receive incentive payments and which locates its principal business
4 activity in an opportunity zone shall not be subject to the
5 requirements of subsection F of this section.

6 2. As used in this subsection:

7 a. "negative economic event" means:

8 (1) a man-made disaster or natural disaster as
9 defined in Section 683.3 of Title 63 of the
10 Oklahoma Statutes, resulting in the loss of a
11 significant number of jobs within a particular
12 county of this state, or

13 (2) an economic circumstance in which a significant
14 number of jobs within a particular county of this
15 state have been lost due to an establishment
16 changing its structure, consolidating with
17 another establishment, closing or moving all or
18 part of its operations out of this state, and

19 b. "significant number of jobs" means Local Area
20 Unemployment Statistics (LAUS) data, as determined by
21 the Bureau of Labor Statistics, for a county which are
22 equal to or in excess of five percent (5%) of the
23 total amount of Local Area Unemployment Statistics
24 (LAUS) data for that county for the calendar year, or

1 most recent twelve-month period in which employment is
2 measured, preceding the event.

3 An establishment which is otherwise qualified to receive
4 incentive payments and which locates in a county in which a negative
5 economic event has occurred within the eighteen-month period
6 preceding the start date shall not be subject to the requirements of
7 subsection F of this section; provided, an establishment shall not
8 be eligible to receive incentive payments based upon a negative
9 economic event with respect to jobs that are transferred from one
10 county of this state to another.

11 H. The Department shall determine if the applicant is qualified
12 to receive incentive payments.

13 I. If the applicant is determined to be qualified by the
14 Department and is not subject to the provisions of subparagraph d of
15 paragraph 7 of subsection A of Section 3603 of this title, the
16 Department shall conduct a cost/benefit analysis to determine the
17 estimated net direct state benefits and the net benefit rate
18 applicable for a ten-year period beginning with the first complete
19 calendar quarter following the start date and to estimate the amount
20 of gross payroll for a ten-year period beginning with the first
21 complete calendar quarter following the start date or for a ~~fifteen-~~
22 ~~year~~ thirty-year period for an establishment defined or classified
23 in the NAICS Manual under U.S. Industry No. 711211 (2007 version).
24 In conducting such cost/benefit analysis, the Department shall

1 consider quantitative factors, such as the anticipated level of new
2 tax revenues to the state along with the added cost to the state of
3 providing services, and such other criteria as deemed appropriate by
4 the Department. In no event shall incentive payments, cumulatively,
5 exceed the estimated net direct state benefits, except for
6 applicants subject to the provisions of subparagraph d of paragraph
7 7 of subsection A of Section 3603 of this title.

8 J. Upon approval of such an application, the Department shall
9 notify the Tax Commission and shall provide it with a copy of the
10 contract and the results of the cost/benefit analysis. The Tax
11 Commission may require the qualified establishment to submit such
12 additional information as may be necessary to administer the
13 provisions of the Oklahoma Quality Jobs Program Act. The approved
14 establishment shall file quarterly claims with the Tax Commission
15 and shall continue to file such quarterly claims during the ten-year
16 incentive period to show its continued eligibility for incentive
17 payments, as provided in Section 3606 of this title, or until it is
18 no longer qualified to receive incentive payments. The
19 establishment may be audited by the Tax Commission to verify such
20 eligibility. Once the establishment is approved, an agreement shall
21 be deemed to exist between the establishment and the State of
22 Oklahoma, requiring the continued incentive payment to be made as
23 long as the establishment retains its eligibility as defined in and
24 established pursuant to this section and Sections 3603 and 3606 of

1 this title and within the limitations contained in the Oklahoma
2 Quality Jobs Program Act, which existed at the time of such
3 approval. An establishment described in this subsection shall be
4 required to repay all incentive payments received under the Oklahoma
5 Quality Jobs Program Act if the establishment is determined by the
6 Oklahoma Tax Commission to no longer have business operations in the
7 state within three (3) years from the beginning of the calendar
8 quarter for which the first incentive payment claim is filed.

9 K. A municipality with a population of less than one hundred
10 thousand (100,000) persons in which an establishment eligible to
11 receive quarterly incentive payments pursuant to the provisions of
12 this section is located may file a claim with the Tax Commission for
13 up to twenty-five percent (25%) of the amount of such payment. The
14 amount of such claim shall not exceed amounts paid by the
15 municipality for direct costs of municipal infrastructure
16 improvements to provide water and sewer service to the
17 establishment. Such claim shall not be approved by the Tax
18 Commission unless the municipality and the establishment have
19 entered into a written agreement for such claims to be filed by the
20 municipality prior to submission of the application of the
21 establishment pursuant to the provisions of this section. If such
22 claim is approved, the amount of the payment to the establishment
23 made pursuant to the provisions of Section 3606 of this title shall
24 be reduced by the amount of the approved claim by the municipality

1 and the Tax Commission shall issue a warrant to the municipality in
2 the amount of the approved claim in the same manner as warrants are
3 issued to qualifying establishments.

4 L. For any contract executed by an establishment on or after
5 ~~the effective date of this act~~ August 2, 2018, five percent (5%) of
6 the quarterly incentive payment amount shall be transferred by the
7 Oklahoma Tax Commission to the Oklahoma Quick Action Closing Fund.

8 SECTION 2. AMENDATORY 68 O.S. 2021, Section 3606, is
9 amended to read as follows:

10 Section 3606. A. As soon as practicable after the end of the
11 first complete calendar quarter following the start date, the
12 establishment shall file a claim for the payment with the Oklahoma
13 Tax Commission and shall specify the actual number and gross payroll
14 of new direct jobs for the establishment for the calendar quarter.
15 The Tax Commission shall verify the actual gross payroll for new
16 direct jobs for the establishment for such calendar quarter. If the
17 Tax Commission is not able to provide such verification utilizing
18 all available resources, the Tax Commission may request such
19 additional information from the establishment as may be necessary or
20 may request the establishment to revise its claim. An establishment
21 may file for an extension of the initial filing date with the
22 Oklahoma Department of Commerce. Any such extension shall be based
23 solely upon an extraordinary adverse business circumstance which
24 prevented the establishment from hiring the new direct jobs as

1 projected. If an establishment fails to file claims as required by
2 this section, it shall forfeit the right to receive any incentive
3 payments after three (3) years from the start date. If an
4 establishment has filed at least one claim pursuant to this section
5 but fails to file another claim within two (2) years of the most
6 recent claim, the Tax Commission, after consulting with the
7 Department of Commerce, may dismiss the establishment from the
8 program, forfeiting the establishment's right to receive incentive
9 payments based on that contract.

10 B. 1. Except as otherwise provided in paragraph 2 of this
11 subsection, if the actual verified gross payroll for four (4)
12 consecutive calendar quarters does not equal or exceed the
13 applicable total required by Section 3604 of this title within three
14 (3) years of the start date, or does not equal or exceed the
15 applicable total required by Section 3604 of this title at any other
16 time during the ten-year period after the start date or during the
17 ~~fifteen-year~~ thirty-year period after the start date for
18 establishments defined or classified in the NAICS Manual under U.S.
19 Industry No. 711211 (2007 version), the incentive payments shall not
20 be made and shall not be resumed until such time as the actual
21 verified gross payroll equals or exceeds the amounts specified in
22 Section 3604 of this title. If an establishment fails to achieve
23 the required gross payroll within three (3) years of the start date,
24 the establishment shall not make a new or renewal application for

1 incentive payments authorized pursuant to the Oklahoma Quality Jobs
2 Program Act for a period of twelve (12) months from the last day of
3 the last month of the three-year period during which the required
4 gross payroll amount was not achieved.

5 2. Any establishment which does not meet the quarterly payroll
6 requirements provided pursuant to paragraph 1 of this subsection
7 during the time period which begins on April 1, 2020, and ends on
8 June 30, 2021, shall continue to receive incentive payments and
9 shall be exempt from the prescribed limitations.

10 C. If the average annualized wage required for an establishment
11 does not equal or exceed the amount specified in paragraph 1 or 2 of
12 subsection F of Section 3604 of this title during any calendar
13 quarter, the incentive payments shall not be made and shall not be
14 resumed until such time as such requirements are met.

15 D. In no event shall incentive payments, cumulatively, exceed
16 the estimated net direct state benefits, except for establishments
17 subject to the provisions of subparagraph d of paragraph 7 of
18 subsection A of Section 3603 of this title.

19 E. An establishment that has qualified pursuant to Section 3604
20 of this title may receive payments only in accordance with the
21 provisions of the law under which it initially applied and was
22 approved. If an establishment that is receiving incentive payments
23 expands, it may apply for additional incentive payments based on the
24 gross payroll anticipated from the expansion only, pursuant to

1 Section 3604 of this title. Provided, an establishment which has
2 suffered an extraordinary adverse business circumstance, as
3 certified by the Incentive Approval Committee, may be allowed to
4 voluntarily withdraw from the Oklahoma Quality Jobs Program, repay
5 to the Tax Commission the total amount of incentive payments
6 received pursuant to the provisions of this section, plus interest
7 at the rate specified in Section 727.1 of Title 12 of the Oklahoma
8 Statutes, and reapply to the Department for a new incentive contract
9 if the establishment qualifies pursuant to the provisions of the
10 Oklahoma Quality Jobs Program Act. Any funds received by the Tax
11 Commission pursuant to the provisions of this subsection shall be
12 apportioned in the manner that income tax revenues are apportioned.

13 F. An establishment that is receiving incentive payments may
14 not apply for additional incentive payments for any new projects
15 until twelve (12) quarters after receipt of the first incentive
16 payment, or until the establishment's actual verified gross payroll
17 for new direct jobs equals or exceeds Two Million Five Hundred
18 Thousand Dollars (\$2,500,000.00) during any four consecutive-
19 calendar-quarter period, whichever comes first. After meeting the
20 requirements of this subsection, an establishment may apply for
21 additional incentive payments based upon the gross payroll
22 anticipated from an expansion only.

23 G. As soon as practicable after verification of the actual
24 gross payroll as required by this section and except as otherwise

1 provided by subsection K of Section 3604 of this title, the Tax
2 Commission shall issue a warrant to the establishment in the amount
3 of the net benefit rate multiplied by the actual gross payroll as
4 determined pursuant to subsection A of this section for the calendar
5 quarter.

6 SECTION 3. This act shall become effective November 1, 2023.

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