OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 25, 2023

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB604

By: Rader of the Senate and Pfeiffer of the House

Title: Revenue and taxation; railroad rehabilitation tax credits; modifying taxable year references. Effective date.

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together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.

2. That the attached Conference Committee Substitute (Request #2252) be adopted.

Respectfully submitted,

SENATE CONFEREES:

David Rader
Rader

Brent Howard
Howard

Newhouse

Garvin

Casey Murdock
Murdock

Coleman

Carri Hicks
Hicks

HOUSE CONFEREES:

General Conference Committee on Appropriations

Senate Action__________Date________ House Action__________Date________

SB604 CCR (A)

HOUSE CONFEREES

Baker, Rhonda	Bashore, Steve
Bennett, Forrest	Blancett, Meloyde
Boatman, Jeff	Boles, Brad
Echols, Jon	Fetgatter, Scott
Ford, Ross	Goodwin, Regina
Hasenbeck, Toni	Hill, Brian
Kannady, Chris	Kendrix, Gerrid
Kerbs, Dell	Lawson, Mark
Lepak, Mark	Lowe, Dick
Luttrell, Ken	Martinez, Ryan
McBride, Mark	McEntire, Marcus
Miller, Nicole	Moore, Anthony
Munson, Cyndi	Newton, Carl
Nichols, Monroe	O'Donnell, Terry
Osburn, Mike	Pfeiffer, John
Provenzano, Melissa	Ranson, Trish
Sterling, Danny	Strom, Judd
Vancuren, Mark	Wallace, Kevin

West, Tammy

Tammy West

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 604 By: Rader of the Senate

and

Fetgatter of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to incentive payments; amending 68 O.S. 2021, Sections 3604 and 3606, which relate to the Oklahoma Quality Jobs Program Act; modifying payment period for certain industry; requiring the extension of contracts for certain entities; prohibiting the inclusion of additional award with certain contract extension; stipulating calculation of payments for certain extended contract; updating statutory reference; and providing an effective date.

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

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

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

Oklahoma Quality Jobs Program Act; provided, such an establishment defined or classified in the NAICS Manual under U.S. Industry No. 711211 (2007 version) may receive quarterly incentive payments for a ~~fifteen-year~~ thirty-year 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. For an establishment defined or classified in the NAICS Manual under U.S. Industry No. 711211 (2007 version) that entered into a contract pursuant to the Oklahoma Quality Jobs Program Act with the Oklahoma Department of Commerce before the effective date of this act:

1. The contract shall be extended from fifteen (15) years to thirty (30) years; and

2. The extension shall not include additional money awarded but shall allow for payments to continue for the thirty-year period, or until the net benefit for the new direct jobs for the original contract has been fully paid out as calculated based upon the original application.

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

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

1. Be engaged in a basic industry;

2. Have an annual gross payroll for new direct jobs projected by the Department to equal or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) within three (3) years of the first complete calendar quarter following the start date; and

3. Have a number of full-time-equivalent employees subject to the tax imposed by Section 2355 of this title and working an annual average of thirty (30) or more hours per week in new direct jobs located in this state equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

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

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

a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the first complete calendar quarter following the start date and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and

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

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

a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00)

a. within three (3) years 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 new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

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

a. is a federal Superfund removal site,

b. is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code,

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

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

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

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

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

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

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

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

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

F. Except as otherwise provided by subsection G of this section, for applications submitted on and after June 4, 2003, in order to qualify to receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in addition to other qualifications specified herein, an establishment shall be required to pay new direct jobs an average annualized wage which equals or exceeds:

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

2. One hundred percent (100%) of the average county wage as that percentage is determined by the Department of Commerce based upon the most recent U.S. Department of Commerce data for the county in which the new jobs are located. For purposes of this paragraph,

health care premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage.

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

G. 1. As used in this subsection, "opportunity zone" means one or more census tracts in which, according to the most recent Federal Decennial Census, at least thirty percent (30%) of the residents have annual gross household incomes from all sources below the poverty guidelines established by the U.S. Department of Health and Human Services. An establishment which is otherwise qualified to receive incentive payments and which locates its principal business activity in an opportunity zone shall not be subject to the requirements of subsection F of this section.

2. As used in this subsection:

a. "negative economic event" means:

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

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

b. "significant number of jobs" means Local Area Unemployment Statistics (LAUS) data, as determined by the Bureau of Labor Statistics, for a county which are equal to or in excess of five percent (5%) of the total amount of Local Area Unemployment Statistics (LAUS) data for that county for the calendar year, or most recent twelve-month period in which employment is measured, preceding the event.

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

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

I. If the applicant is determined to be qualified by the Department and is not subject to the provisions of subparagraph d of paragraph 7 of subsection A of Section 3603 of this title, 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-year period beginning with the first complete calendar quarter following the start date and to estimate the amount of gross payroll for a ten-year period beginning with the first complete calendar quarter following the start date or for a ~~fifteen-year~~ thirty-year period for an establishment defined or classified in the NAICS Manual under U.S. Industry No. 711211 (2007 version). 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, except for applicants subject to the provisions of subparagraph d of paragraph 7 of subsection A of Section 3603 of this title.

J. 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 Quality Jobs Program Act. The approved establishment shall file quarterly claims with the Tax Commission and shall continue to file such quarterly claims during the ten-year incentive period to show its continued eligibility for incentive payments, as provided in Section 3606 of this title, or until it is no longer qualified to receive incentive payments. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval. An establishment described in this subsection shall be required to repay all incentive payments received under the Oklahoma Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

K. A municipality with a population of less than one hundred thousand (100,000) persons in which an establishment eligible to receive quarterly incentive payments pursuant to the provisions of this section is located may file a claim with the Tax Commission for up to twenty-five percent (25%) of the amount of such payment. The amount of such claim shall not exceed amounts paid by the municipality for direct costs of municipal infrastructure improvements to provide water and sewer service to the establishment. Such claim shall not be approved by the Tax Commission unless the municipality and the establishment have entered into a written agreement for such claims to be filed by the municipality prior to submission of the application of the establishment pursuant to the provisions of this section. If such claim is approved, the amount of the payment to the establishment made pursuant to the provisions of Section 3606 of this title shall be reduced by the amount of the approved claim by the municipality and the Tax Commission shall issue a warrant to the municipality in the amount of the approved claim in the same manner as warrants are issued to qualifying establishments.

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

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

Section 3606. A. As soon as practicable after the end of the first complete calendar quarter following the start date, the 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 for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the 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 establishment as may be necessary or may request the establishment to revise its claim. An 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 establishment from hiring the new direct jobs as projected. If an establishment fails to file claims as required by this section, it shall forfeit the right to receive any incentive payments after three (3) 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. 1. Except as otherwise provided in paragraph 2 of this subsection, if the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 3604 of this title within three (3) years of the start date, or does not equal or exceed the applicable total required by Section 3604 of this title at any other time during the ten-year period after the start date or during the ~~fifteen-year~~ thirty-year period after the start date for establishments defined or classified in the NAICS Manual under U.S. Industry No. 711211 (2007 version), 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 3604 of this title. If an establishment fails to achieve the required gross payroll within three (3) years of the start date, the establishment shall not make a new or renewal application for incentive payments authorized pursuant to the Oklahoma Quality Jobs Program Act for a period of twelve (12) months from the last day of the last month of the three-year period during which the required gross payroll amount was not achieved.

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

C. If the average annualized wage required for an establishment does not equal or exceed the amount specified in paragraph 1 or 2 of subsection F of Section 3604 of this title 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, except for establishments subject to the provisions of subparagraph d of paragraph 7 of subsection A of Section 3603 of this title.

E. An establishment that has qualified pursuant to Section 3604 of this title may receive payments only in accordance with the provisions of the law under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of this title. Provided, an establishment which has suffered an extraordinary adverse business circumstance, as certified by the Incentive Approval Committee, may be allowed to voluntarily withdraw from the Oklahoma Quality Jobs Program, repay to the Tax Commission the total amount of incentive payments received pursuant to the provisions of this section, plus interest at the rate specified in Section 727.1 of Title 12 of the Oklahoma Statutes, and reapply to the Department for a new incentive contract if the establishment qualifies pursuant to the provisions of the Oklahoma Quality Jobs Program Act. Any funds received by the Tax Commission pursuant to the provisions of this subsection shall be apportioned in the manner that income tax revenues are apportioned.

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

G. As soon as practicable after verification of the actual gross payroll as required by this section and except as otherwise provided by subsection K of Section 3604 of this title, the Tax Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

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

59-1-2252 QD 5/25/2023 3:07:00 PM