

1 ENGROSSED SENATE
2 BILL NO. 13x

By: Thompson (Roger) and Hall
of the Senate

3 and

4 Wallace and Martinez of the
5 House

6
7 An Act relating to incentive payments; amending 68
8 O.S. 2021, Sections 3604 and 3606, which relate to
9 the Oklahoma Quality Jobs Program Act; modifying
10 payment period for certain industry; updating
11 statutory reference; and providing an effective date.

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

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

15 Section 3604. A. Except as otherwise provided in subsection I
16 or subsection L of this section, an establishment which meets the
17 qualifications specified in the Oklahoma Quality Jobs Program Act
18 may receive quarterly incentive payments for a ten-year period from
19 the Oklahoma Tax Commission pursuant to the provisions of the
20 Oklahoma Quality Jobs Program Act; provided, such an establishment
21 defined or classified in the NAICS Manual under U.S. Industry No.
22 711211 (2007 version) may receive quarterly incentive payments for a
23 ~~fifteen-year~~ thirty-year period. The amount of such payments shall
24 be equal to the net benefit rate multiplied by the actual gross

1 payroll of new direct jobs for a calendar quarter as verified by the
2 Oklahoma Employment Security Commission.

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

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

14 1. Be engaged in a basic industry;

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

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

24

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

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

- 6 a. have an annual gross payroll for new direct jobs
7 projected by the Department to equal or exceed One
8 Million Five Hundred Thousand Dollars (\$1,500,000.00)
9 within three (3) years of the first complete calendar
10 quarter following the start date and make, or which
11 will make within one (1) year, at least seventy-five
12 percent (75%) of its total sales, as determined by the
13 Incentive Approval Committee pursuant to the
14 provisions of subsection B of Section 3603 of this
15 title, to out-of-state customers or buyers, to in-
16 state customers or buyers if the product or service is
17 resold by the purchaser to an out-of-state customer or
18 buyer for ultimate use, or to the federal government,
19 unless the annual gross payroll equals or exceeds Two
20 Million Five Hundred Thousand Dollars (\$2,500,000.00)
21 in which case the requirements for purchase of output
22 provided by this subparagraph shall not apply, and
23 b. have a number of full-time-equivalent employees
24 working an average of thirty (30) or more hours per

1 week in new direct jobs equal to or in excess of
2 eighty percent (80%) of the total number of new direct
3 jobs; and

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

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

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

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

18 a. is a federal Superfund removal site,
19 b. is listed on the National Priorities List established
20 under Section 9605 of Title 42 of the United States
21 Code,

22 c. has been formally deferred to the state in lieu of
23 listing on the National Priorities List, or
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1 d. has been determined by the Department of Environmental
2 Quality to be contaminated by any substance regulated
3 by a federal or state statute governing environmental
4 conditions for real property pursuant to an order of
5 the Department of Environmental Quality,
6 shall qualify for incentive payments irrespective of its actual
7 gross payroll or the number of full-time-equivalent employees
8 engaged in new direct jobs.

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

20 3. In order to qualify for the incentive payments pursuant to
21 this subsection, the entity shall obtain from the Department of
22 Environmental Quality a letter of concurrence that:
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1 a. the site designated by the entity does meet one or
2 more of the requirements listed in paragraph 1 of this
3 subsection, and

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

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

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

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

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

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

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

19 G. 1. As used in this subsection, "opportunity zone" means one
20 or more census tracts in which, according to the most recent Federal
21 Decennial Census, at least thirty percent (30%) of the residents
22 have annual gross household incomes from all sources below the
23 poverty guidelines established by the U.S. Department of Health and
24 Human Services. An establishment which is otherwise qualified to

1 receive incentive payments and which locates its principal business
2 activity in an opportunity zone shall not be subject to the
3 requirements of subsection F of this section.

4 2. As used in this subsection:

5 a. "negative economic event" means:

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

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

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

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

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

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

1 providing services, and such other criteria as deemed appropriate by
2 the Department. In no event shall incentive payments, cumulatively,
3 exceed the estimated net direct state benefits, except for
4 applicants subject to the provisions of subparagraph d of paragraph
5 7 of subsection A of Section 3603 of this title.

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

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

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

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

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

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

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

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

1 Program Act for a period of twelve (12) months from the last day of
2 the last month of the three-year period during which the required
3 gross payroll amount was not achieved.

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

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

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

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

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

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

22 G. As soon as practicable after verification of the actual
23 gross payroll as required by this section and except as otherwise
24 provided by subsection K of Section 3604 of this title, the Tax

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

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

6 Passed the Senate the 24th day of May, 2023.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2023.

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Presiding Officer of the House
of Representatives

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