

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 2536

6 By: Blancett

7 COMMITTEE SUBSTITUTE

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

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

15 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3904, as  
16 last amended by Section 1, Chapter 191, O.S.L. 2018 (68 O.S. Supp.  
17 2018, Section 3904), is amended to read as follows:

18 Section 3904. A. An establishment which meets the  
19 qualifications specified in the Small Employer Quality Jobs  
20 Incentive Act may receive quarterly incentive payments for a seven-  
21 year period from the Oklahoma Tax Commission pursuant to the  
22 provisions of the Small Employer Quality Jobs Incentive Act in an  
23 amount equal to the net benefit rate multiplied by the actual gross  
24

1 taxable payroll of new direct jobs as verified by the Tax  
2 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. The establishment may apply for an  
8 effective date for a project, which shall not be more than twelve  
9 (12) months from the date the application is submitted to the  
10 Department.

11 C. Before approving an application for incentive payments, the  
12 Department must first determine that the applicant meets the  
13 following requirements:

14 1. Be engaged in a basic industry;

15 2. Has no more than five hundred full-time employees in this  
16 state on the date of application nor an average of more than five  
17 hundred full-time employees in this state during the four calendar  
18 quarters immediately preceding the date of application;

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

23 a. if the establishment is located in a municipality with  
24 a population less than three thousand five hundred

1 (3,500) persons, as determined by the Department of  
2 Commerce based on the most recent U.S. Department of  
3 Commerce data, or if the establishment is located in  
4 an unincorporated area and the largest municipality  
5 within twenty (20) miles of the establishment is such  
6 a municipality, new direct jobs equal to the greater  
7 of five (5) jobs or five percent (5%) of the company's  
8 full-time employment at the date of application,

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

21 c. if the establishment is located in a municipality with  
22 a population of seven thousand (7,000) persons or  
23 more, as determined by the Department of Commerce  
24 based on the most recent U.S. Department of Commerce

1 data, or if the establishment is located in an  
2 unincorporated area and the largest municipality  
3 within twenty (20) miles of the establishment is such  
4 a municipality, new direct jobs equal to the greater  
5 of fifteen (15) jobs or ten percent (10%) of the  
6 company's full-time employment at the date of  
7 application.

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

22 4. Has or will have within twelve (12) months of the date of  
23 application, or after July 1, 2011, within twenty-four (24) months  
24 of the date of application, as determined by the Department, sales

1 of at least ~~seventy-five percent (75%)~~ thirty-five percent (35%) for  
2 the first two (2) years and subsequently sixty percent (60%) of its  
3 total sales to out-of-state customers or buyers, to in-state  
4 customers or buyers if the product or service is resold by the  
5 purchaser to an out-of-state customer or buyer for ultimate use, or  
6 to the federal government, except that:

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

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

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

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

22 a. one hundred twenty-five percent (125%) of the average  
23 county wage of small employers located in that county  
24 as that percentage is determined by the Department of

1 Commerce based on the most recent wage and employment  
2 data from the Oklahoma Employment Security Commission  
3 for the county in which the new direct jobs are  
4 located. For purposes of this subparagraph, health  
5 care premiums paid by the applicant for individuals in  
6 new direct jobs shall be included in the annualized  
7 wage, or

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

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

22 (1) according to the most recent annual determination  
23 by the Oklahoma Employment Security Commission, a  
24 county unemployment rate more than ten percent

1 (10%) higher than the state unemployment rate,  
2 and

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

6 6. Has a basic health benefit plan which, as determined by the  
7 Department, meets the elements established under divisions (1)  
8 through (7) of subparagraph b of paragraph 1 of subsection A of  
9 Section 3603 of this title and which will be offered to individuals  
10 within twelve (12) months of employment in a new direct job;

11 7. Has not received incentive payments under the Oklahoma  
12 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former  
13 Military Facility Development Act; and

14 8. Is not qualified for approval of an application for  
15 incentive payments under the Oklahoma Quality Jobs Program Act, the  
16 Saving Quality Jobs Act, or the Former Military Facility Development  
17 Act.

18 D. The Oklahoma Department of Commerce shall determine if an  
19 applicant is qualified to receive the incentive payment. Upon  
20 qualifying the applicant, the Department shall notify the Tax  
21 Commission and shall provide it with a copy of the application, and  
22 approval which shall provide the number of persons employed by the  
23 applicant upon the date of approval and the maximum total incentives  
24 which may be paid to the applicant during the seven-year period.

1 The Tax Commission may require the qualified establishment to submit  
2 additional information as may be necessary to administer the  
3 provisions of the Small Employer Quality Jobs Incentive Act. The  
4 approved establishment shall report to the Tax Commission quarterly  
5 to show its continued eligibility for incentive payments, as  
6 provided in Section 3905 of this title. Establishments may be  
7 audited by the Tax Commission to verify such eligibility. Once the  
8 establishment is approved, an agreement shall be deemed to exist  
9 between the establishment and the State of Oklahoma, requiring  
10 incentive payments to be made for a seven-year period as long as the  
11 establishment retains its eligibility and within the limitations of  
12 the Small Employer Quality Jobs Incentive Act which existed at the  
13 time of such approval. Any establishment which has been approved  
14 for incentive payments prior to July 1, 2002, shall continue to  
15 receive such payments pursuant to the laws as they existed prior to  
16 July 1, 2002, for any period of time of the original five-year  
17 period for such payments remaining after July 1, 2002.

18 SECTION 2. This act shall become effective July 1, 2019.

19 SECTION 3. It being immediately necessary for the preservation  
20 of the public peace, health or safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

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24 57-1-8347 MAH 02/28/19