

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 ENGROSSED SENATE

5 BILL NO. 1782

By: Rader and Kirt of the
Senate

6 and

7 Talley of the House

8
9 An Act relating to incentive payments; amending 68
10 O.S. 2021, Sections 3604 and 3604.1, which relate to
11 the Oklahoma Quality Jobs Program; modifying period
12 of incentive payments for applications submitted
13 after certain date; modifying period for effective
14 date of agreement; modifying wage requirement for
15 certain applicants; requiring the establishment to
16 meet wage requirements at certain period of the
17 agreement; limiting maximum wage requirement to
18 certain period; updating statutory reference; and
19 providing an effective date.

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24 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

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

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

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

- 19 1. Be engaged in a basic industry;
- 20 2. Have an annual gross payroll for new direct jobs projected
21 by the Department to equal or exceed Two Million Five Hundred
22 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
23 complete calendar quarter following the start date; and

24

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

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

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

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

1 Million Five Hundred Thousand Dollars (\$2,500,000.00)

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

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

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

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

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

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

- 23 a. is a federal Superfund removal site,
24

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 both at the effective date of the agreement and the beginning of the
2 sixth year of the agreement, to pay new direct jobs an average
3 annualized wage which equals or exceeds:

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

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

16 Provided, no average wage requirement shall exceed Twenty-five
17 Thousand Dollars (\$25,000.00), in any county, for applications
18 received before January 1, 2023. This maximum wage threshold shall
19 be indexed and modified from time to time based on the latest
20 Consumer Price Index year-to-date percent change release as of the
21 date of the annual average county wage data release from the Bureau
22 of Economic Analysis of the U.S. Department of Commerce.

23 G. 1. As used in this subsection, "opportunity zone" means one
24 or more census tracts in which, according to the most recent Federal

1 Decennial Census, at least thirty percent (30%) of the residents
2 have annual gross household incomes from all sources below the
3 poverty guidelines established by the U.S. Department of Health and
4 Human Services. An establishment which is otherwise qualified to
5 receive incentive payments and which locates its principal business
6 activity in an opportunity zone shall not be subject to the
7 requirements of subsection F of this section.

8 2. As used in this subsection:

9 a. "negative economic event" means:

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

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

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

1 total amount of Local Area Unemployment Statistics
2 (LAUS) data for that county for the calendar year, or
3 most recent twelve-month period in which employment is
4 measured, preceding the event.

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

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

15 I. If the applicant is determined to be qualified by the
16 Department and is not subject to the provisions of subparagraph d of
17 paragraph 7 of subsection A of Section 3603 of this title, the
18 Department shall conduct a cost/benefit analysis to determine the
19 estimated net direct state benefits and the net benefit rate
20 applicable for a ten-year period beginning with the first complete
21 calendar quarter following the start date and to estimate the amount
22 of gross payroll for a ten-year period beginning with the first
23 complete calendar quarter following the start date or for a fifteen-
24 year period for an establishment defined or classified in the NAICS

1 Manual under U.S. Industry No. 711211 (2007 version). In conducting
2 such cost/benefit analysis, the Department shall consider
3 quantitative factors, such as the anticipated level of new tax
4 revenues to the state along with the added cost to the state of
5 providing services, and such other criteria as deemed appropriate by
6 the Department. In no event shall incentive payments, cumulatively,
7 exceed the estimated net direct state benefits, except for
8 applicants subject to the provisions of subparagraph d of paragraph
9 7 of subsection A of Section 3603 of this title.

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

1 long as the establishment retains its eligibility as defined in and
2 established pursuant to this section and Sections 3603 and 3606 of
3 this title and within the limitations contained in the Oklahoma
4 Quality Jobs Program Act, which existed at the time of such
5 approval. An establishment described in this subsection shall be
6 required to repay all incentive payments received under the Oklahoma
7 Quality Jobs Program Act if the establishment is determined by the
8 Oklahoma Tax Commission to no longer have business operations in the
9 state within three (3) years from the beginning of the calendar
10 quarter for which the first incentive payment claim is filed.

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

1 made pursuant to the provisions of Section 3606 of this title shall
2 be reduced by the amount of the approved claim by the municipality
3 and the Tax Commission shall issue a warrant to the municipality in
4 the amount of the approved claim in the same manner as warrants are
5 issued to qualifying establishments.

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

10 SECTION 2. AMENDATORY 68 O.S. 2021, Section 3604.1, is
11 amended to read as follows:

12 Section 3604.1. A. A qualified federal contractor may receive
13 quarterly incentive payments for renewable ten-year periods from the
14 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma
15 Quality Jobs Program Act and the provisions of this section.

16 B. The amount of such payments shall be equal to a net benefit
17 rate of not less than twenty-five hundredths of one percent (0.25%),
18 but not greater than two percent (2%), multiplied by the total
19 qualified labor hours worked by employees of the federal contractor
20 or employees of a qualified federal subcontractor, or both, pursuant
21 to a qualified federal contract for a calendar quarter as verified
22 by the Oklahoma Employment Security Commission and certified by a
23 qualified federal contractor verifier. The net benefit rate for a
24 qualified federal contractor shall be scaled to annual

1 subcontracting goals that account for both total qualified
2 subcontract labor hours and the ratio of qualified subcontract labor
3 hours to total qualified labor hours. Unless limited by the
4 cost/benefit analysis, the net benefit rate shall:

5 1. Not exceed twenty-five hundredths of one percent (0.25%)
6 when annual qualified subcontract labor hours are less than Two
7 Hundred Thousand Dollars (\$200,000.00) or when annual qualified
8 subcontract labor is less than one percent (1%) of the annual total
9 qualified labor hours claimed;

10 2. Not be less than five-tenths of one percent (0.5%) when
11 subcontract goals are met with a minimum of Two Hundred Thousand
12 Dollars (\$200,000.00) of annual total qualified subcontractor labor
13 hours and these hours are a minimum of one percent (1%) of the
14 annual total qualified hours claimed;

15 3. Not be less than one percent (1%) when subcontract goals are
16 met with a minimum of One Million Dollars (\$1,000,000.00) of annual
17 total qualified subcontractor labor hours and when these hours
18 represent a minimum of five percent (5%) of the annual total
19 qualified hours claimed;

20 4. Not be less than one and five-tenths percent (1.5%) when
21 subcontract goals are met with a minimum of Two Million Dollars
22 (\$2,000,000.00) of annual total qualified subcontractor labor hours
23 and these hours are a minimum of ten percent (10%) of the annual
24 total qualified hours claimed; and

1 5. Not be less than two percent (2.0%) when subcontract goals
2 are met with a minimum of Four Million Dollars (\$4,000,000.00) of
3 annual total qualified subcontractor labor hours and these hours are
4 a minimum of twenty percent (20%) of the annual total qualified
5 hours claimed.

6 C. In order to receive incentive payments, a qualified federal
7 contractor shall apply to the Oklahoma Department of Commerce within
8 one hundred eighty (180) days following the date of the award of a
9 qualified federal contract or award of a new qualified subcontract
10 under an existing qualified federal contract. The application shall
11 be on a form prescribed by the Department and shall contain such
12 information as may be required by the Department to determine if the
13 applicant is qualified. Once qualified by the Department, the
14 applicant shall submit qualified federal contracts to the federal
15 contract verifier. The federal contract verifier shall establish
16 with the applicant an information system(s) or contract(s) as may be
17 required to certify the total qualified labor hours, qualified labor
18 rates, and reimbursement through the qualified federal contract. A
19 qualified federal contractor may apply for an effective date for a
20 project, which shall not be more than ~~twenty-four (24) months~~ twelve
21 (12) months from the date the application is submitted to the
22 Department. No state agency shall be required to make any payment
23 to a qualified federal contract verifier for any information needed
24 by the agency to perform any duty imposed upon it pursuant to the

1 provisions of Section 3601 et seq. of this title. All costs for the
2 federal contract verifier shall be reimbursed through value-added
3 services on the qualified federal contract or other mechanisms
4 agreed to by the federal contractor verifier and the federal
5 contract performers.

6 D. In order to qualify to receive incentive payments as
7 authorized by the Oklahoma Quality Jobs Program Act, in addition to
8 other qualifications specified herein, a qualified federal
9 contractor shall be required to pay direct jobs an average
10 annualized wage, both at the effective date of the agreement and the
11 beginning of the sixth year of the agreement, which equals or
12 exceeds:

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

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

1 Provided, no average wage requirement shall exceed Twenty-nine
2 Thousand Four Hundred Nine Dollars (\$29,409.00), in any county, for
3 applications received before January 1, 2023. This maximum wage
4 threshold shall be indexed and modified from time to time based on
5 the latest Consumer Price Index year-to-date percent change release
6 as of the date of the annual average county wage data release from
7 the Bureau of Economic Analysis of the U.S. Department of Commerce.

8 3. For qualified subcontractor work, the qualified federal
9 contractor shall have a minimum average qualified labor rate
10 requirement paid to the subcontractor of Thirty-one Dollars (\$31.00)
11 per hour, in any county. This maximum wage threshold shall be
12 indexed and modified from time to time based on the latest Consumer
13 Price Index year-to-date percent change release as of the date of
14 the annual average county wage data release from the Bureau of
15 Economic Analysis of the U.S. Department of Commerce.

16 E. The Department shall determine if the applicant is qualified
17 to receive incentive payments using information supplied to the
18 Department by the qualified federal contractor verifier. The NAICS
19 code or codes under which the federal government awarded the
20 qualified federal contract shall be used to determine the basic
21 industry for a qualified federal contractor. For federal contracts
22 awarded under NAICS codes not within the definition of basic
23 industry pursuant to paragraph 1 of subsection A of Section 3603 of
24 this title, the Department of Commerce, with the federal contract

1 verifier, may evaluate and utilize individual statement of work
2 items that would qualify within a basic industry definition.

3 F. If the applicant is determined to be qualified by the
4 Department, the Department shall conduct a cost/benefit analysis to
5 determine the estimated net direct state benefits and the net
6 benefit rate, as provided by subsection B of this section,
7 applicable for a ten-year period beginning with the first complete
8 calendar quarter following the start date and to estimate the amount
9 of gross payroll and total qualified labor hours for a ten-year
10 period beginning with the first complete calendar quarter following
11 the start date. In conducting such cost/benefit analysis, the
12 Department shall consider quantitative factors, such as the
13 anticipated level of new tax revenues to the state along with the
14 added cost to the state of providing services, and such other
15 criteria as deemed appropriate by the Department. In no event shall
16 incentive payments, cumulatively, exceed the estimated net direct
17 state benefits. Using this net cost/benefit analysis model, the
18 Department may establish the renewable ten-year contract with a
19 qualified federal contractor at the entity level to encompass any
20 current or future qualified federal contracts that meet the
21 cost/benefit analysis metrics as determined by the federal
22 contractor verifier and confirmed by the Department.

23 G. Upon approval of such an application, the Department shall
24 notify the Tax Commission and shall provide it with a copy of the

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

22 H. For qualified federal contracts with periods of performance
23 exceeding two (2) years, if the actual annual verified gross
24 qualified labor hours for four (4) consecutive calendar quarters

1 does not equal or exceed Two Million Five Hundred Thousand Dollars
2 (\$2,500,000.00) within three (3) years of the start date, or does
3 not equal or exceed actual annual gross qualified labor hours of Two
4 Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other
5 time during the ten-year period after the start date, the incentive
6 payments shall not be made and shall not be resumed until such time
7 as the actual annual qualified labor hours exceed Two Million Five
8 Hundred Thousand Dollars (\$2,500,000.00).

9 I. If the average annualized wage or minimum average qualified
10 labor rate required by subsection H of this section is not met
11 during any calendar quarter, the incentive payments shall not be
12 made and shall not be resumed until such time as such requirements
13 are met.

14 J. Before approving a quarterly incentive payment for a
15 qualified federal contract, the federal contract verifier must first
16 determine through the Department that neither the qualified federal
17 contractor nor the subcontractor are receiving incentive payments
18 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
19 Act, the 21st Century Quality Jobs Incentive Act or the Former
20 Military Facility Development Act for the performance of the same
21 such services under the qualified federal contract and is not
22 qualified for approval of an application for incentive payments
23 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
24 Act, the 21st Century Quality Jobs Incentive Act or the Former

1 Military Facility Development Act for the performance of the same
2 such services under the qualified federal contract. If the
3 qualified federal contractor or the subcontractor are receiving or
4 have an approved application for incentive payments under the
5 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the
6 21st Century Quality Jobs Incentive Act or the Former Military
7 Facility Development Act for the performance of the same such
8 services under the qualified federal contract, each may choose to
9 defer in part or in entirety the other incentives for the qualified
10 federal contractor to receive the incentives pursuant to subsection
11 B of this section. The federal contract verifier shall confirm any
12 deferrals and ensure the total for all quality jobs incentive
13 payments on any individual does not exceed the total net benefit to
14 the state. Should neither the federal contractor nor the
15 subcontractor defer in part or in entirety their incentive payments
16 such that the total for all Quality Jobs incentive payments exceeds
17 the total net benefit to the state, the priority for incentive
18 payments shall go to the entity with the earliest recognized start
19 date ~~identified~~ identified within the current Department of
20 Commerce Quality Jobs contract.

21 SECTION 3. This act shall become effective November 1, 2022.

22
23 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
24 04/06/2022 - DO PASS.