

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 SENATE BILL 1267

By: Kirt

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5  
6 AS INTRODUCED

7 An Act relating to incentive payments; amending 68  
8 O.S. 2021, Section 3604, as last amended by Section  
9 1, Chapter 29, 1st Extraordinary Session, O.S.L. 2023  
10 (68 O.S. Supp. 2023, Section 3604), which relates to  
11 the Oklahoma Quality Jobs Program Act; requiring  
12 establishment to provide certain leave to qualify to  
13 receive incentive payments; updating statutory  
14 reference; updating statutory language; and providing  
15 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, as  
18 last amended by Section 1, Chapter 29, 1st Extraordinary Session,  
19 O.S.L. 2023 (68 O.S. Supp. 2023, Section 3604), is amended to read  
20 as follows:

21 Section 3604. A. Except as otherwise provided in subsection I  
22 or subsection L of this section, an establishment which meets the  
23 qualifications specified in the Oklahoma Quality Jobs Program Act  
24 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.

1 711211 (2007 version) may receive quarterly incentive payments for a  
2 thirty-year period. The amount of such payments shall be equal to  
3 the net benefit rate multiplied by the actual gross payroll of new  
4 direct jobs for a calendar quarter as verified by the Oklahoma  
5 Employment Security Commission. For an establishment defined or  
6 classified in the NAICS Manual under U.S. Industry No. 711211 (2007  
7 version) that entered into a contract pursuant to the Oklahoma  
8 Quality Jobs Program Act with the Oklahoma Department of Commerce  
9 before ~~the effective date of this act~~ November 1, 2023:

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

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

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

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

4 1. Be engaged in a basic industry;

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

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

15 4. For applications submitted after the effective date of this  
16 act, provide at least twelve (12) weeks paid family leave and at  
17 least two (2) weeks of additional paid leave for new direct jobs.

18 For the purposes of this paragraph, "paid family leave" shall  
19 include:

20 a. all leave entitled to eligible employees as otherwise  
21 provided in the Family and Medical Leave Act, 29

22 U.S.C. 2601, et seq., and

23 b. payment for the leave shall equal at least one hundred  
24 percent (100%) of the employee's wage.

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

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

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

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

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

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

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

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

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

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

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

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

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 Oklahoma Department of Commerce based on the most  
3 recent U.S. Department of Commerce data for the county in which the  
4 new 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 Oklahoma Department of Commerce  
9 based upon the most recent U.S. Department of Commerce data for the  
10 county in which the new jobs are located. For purposes of this  
11 paragraph, health care premiums paid by the applicant for  
12 individuals in new direct jobs shall not be included in the  
13 annualized wage.

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

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



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

5 2. As used in this subsection:

6 a. "negative economic event" means:

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

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

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

24

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 Oklahoma Department of Commerce shall determine if the  
12          applicant is qualified to receive incentive payments.

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

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

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

1 made as long as the establishment retains its eligibility as defined  
2 in and established pursuant to this section and Sections 3603 and  
3 3606 of this title and within the limitations contained in the  
4 Oklahoma 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 August 2, 2018, five percent (5%) of the quarterly incentive payment  
8 amount shall be transferred by the Oklahoma Tax Commission to the  
9 Oklahoma Quick Action Closing Fund.

10 SECTION 2. This act shall become effective November 1, 2024.

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