

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1787

By: Kirt

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6
7 AS INTRODUCED

8 An Act relating to incentive payments; amending 68
9 O.S. 2021, Sections 3604 and 3604.1, which relate to
10 the Oklahoma Quality Jobs Program; requiring
11 establishment to meet wage requirements at certain
12 period of the agreement; updating statutory
13 reference; and providing an effective date.

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

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

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

1 fifteen-year period. The amount of such payments shall be equal to
2 the net benefit rate multiplied by the actual gross payroll of new
3 direct jobs for a calendar quarter as verified by the Oklahoma
4 Employment Security Commission.

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

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

- 16 1. Be engaged in a basic industry;
- 17 2. Have an annual gross payroll for new direct jobs projected
18 by the Department to equal or exceed Two Million Five Hundred
19 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
20 complete calendar quarter following the start date; and
- 21 3. Have a number of full-time-equivalent employees subject to
22 the tax imposed by Section 2355 of this title and working an annual
23 average of thirty (30) or more hours per week in new direct jobs
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1 located in this state equal to or in excess of eighty percent (80%)
2 of the total number of new direct jobs.

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

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

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

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 Department to equal or exceed One
10 Million Five Hundred Thousand Dollars (\$1,500,000.00)
11 within three (3) years of the first complete calendar
12 quarter following the start date, and

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

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

20 a. is a federal Superfund removal site,

21 b. is listed on the National Priorities List established
22 under Section 9605 of Title 42 of the United States
23 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 both at the effective date of the agreement and the beginning of the
23 sixth year of the agreement, to pay new direct jobs an average
24 annualized wage which equals or 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 period for an establishment defined or classified in the NAICS
21 Manual under U.S. Industry No. 711211 (2007 version). In conducting
22 such cost/benefit analysis, the Department shall consider
23 quantitative factors, such as the anticipated level of new tax
24 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 3604.1, is
8 amended to read as follows:

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

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

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

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

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

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

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

4 C. In order to receive incentive payments, a qualified federal
5 contractor shall apply to the Oklahoma Department of Commerce within
6 one hundred eighty (180) days following the date of the award of a
7 qualified federal contract or award of a new qualified subcontract
8 under an existing qualified federal contract. The application shall
9 be on a form prescribed by the Department and shall contain such
10 information as may be required by the Department to determine if the
11 applicant is qualified. Once qualified by the Department, the
12 applicant shall submit qualified federal contracts to the federal
13 contract verifier. The federal contract verifier shall establish
14 with the applicant an information system(s) or contract(s) as may be
15 required to certify the total qualified labor hours, qualified labor
16 rates, and reimbursement through the qualified federal contract. A
17 qualified federal contractor may apply for an effective date for a
18 project, which shall not be more than twenty-four (24) months from
19 the date the application is submitted to the Department. No state
20 agency shall be required to make any payment to a qualified federal
21 contract verifier for any information needed by the agency to
22 perform any duty imposed upon it pursuant to the provisions of
23 Section 3601 et seq. of this title. All costs for the federal
24 contract verifier shall be reimbursed through value-added services

1 on the qualified federal contract or other mechanisms agreed to by
2 the federal contractor verifier and the federal contract performers.

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

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

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

21 Provided, no average wage requirement shall exceed Twenty-nine
22 Thousand Four Hundred Nine Dollars (\$29,409.00), in any county.

23 This maximum wage threshold shall be indexed and modified from time
24 to time based on the latest Consumer Price Index year-to-date

1 percent change release as of the date of the annual average county
2 wage data release from the Bureau of Economic Analysis of the U.S.
3 Department of Commerce.

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

12 E. The Department shall determine if the applicant is qualified
13 to receive incentive payments using information supplied to the
14 Department by the qualified federal contractor verifier. The NAICS
15 code or codes under which the federal government awarded the
16 qualified federal contract shall be used to determine the basic
17 industry for a qualified federal contractor. For federal contracts
18 awarded under NAICS codes not within the definition of basic
19 industry pursuant to paragraph 1 of subsection A of Section 3603 of
20 this title, the Department of Commerce, with the federal contract
21 verifier, may evaluate and utilize individual statement of work
22 items that would qualify within a basic industry definition.

23 F. If the applicant is determined to be qualified by the
24 Department, the Department shall conduct a cost/benefit analysis to

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

19 G. Upon approval of such an application, the Department shall
20 notify the Tax Commission and shall provide it with a copy of the
21 contract that has been cosigned by the federal contractor verifier
22 and the results of the cost/benefit analysis. The Tax Commission
23 may require the qualified federal contractor, federal contract
24 verifier, and qualified subcontractors to submit such additional

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

18 H. For qualified federal contracts with periods of performance
19 exceeding two (2) years, if the actual annual verified gross
20 qualified labor hours for four (4) consecutive calendar quarters
21 does not equal or exceed Two Million Five Hundred Thousand Dollars
22 (\$2,500,000.00) within three (3) years of the start date, or does
23 not equal or exceed actual annual gross qualified labor hours of Two
24 Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other

1 time during the ten-year period after the start date, the incentive
2 payments shall not be made and shall not be resumed until such time
3 as the actual annual qualified labor hours exceed Two Million Five
4 Hundred Thousand Dollars (\$2,500,000.00).

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

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

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

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

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