

CS for SB 1577

THE STATE SENATE
Wednesday, March 1, 2006

Committee Substitute for
Senate Bill No. 1577

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1577 - By: FISHER of the Senate and YOUNG of the House.

[revenue and taxation - 68 O.S. 2001, Sections 3603, as last amended by Section 1, Chapter 352, O.S.L. 2005, 3604, as last amended by Section 2, Chapter 457, O.S.L. 2004, 3606, as amended by Section 3, Chapter 457, O.S.L. 2004, 3903 and 3904, as last amended by Sections 2 and 3, Chapter 352, O.S.L. 2005 and 3905, as amended by Section 4, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2005, Sections 3603, 3604, 3606, 3903, 3904 and 3905) - the Oklahoma Quality Jobs Program Act and the Oklahoma Small Employer Quality Jobs Program Act -

emergency]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by Section 1, Chapter 352, O.S.L. 2005 (68 O.S. Supp. 2005, Section 3603), is amended to read as follows:

Section 3603. A. As used in Section 3601 et seq. of this title:

1. a. "Basic industry" means:

- (1) those manufacturing activities defined or classified in the NAICS Manual under Industry Sector Nos. 31, 32 and 33, Industry Group No. 5111 or Industry No. 11331,

1 (2) those electric power generation, transmission and
2 distribution activities defined or classified in
3 the NAICS Manual under U.S. Industry Nos. 221111
4 through 221122, if:

5 (a) an establishment engaged therein qualifies
6 as an exempt wholesale generator as defined
7 by 15 U.S.C., Section 79z-5a,

8 (b) the exempt wholesale generator facility
9 consumes from sources located within the
10 state at least ninety percent (90%) of the
11 total energy used to produce the electrical
12 output which qualifies for the specialized
13 treatment provided by the Energy Policy Act
14 of 1992, P.L. 102-486, 106 Stat. 2776, as
15 amended, and federal regulations adopted
16 pursuant thereto,

17 (c) the exempt wholesale generator facility
18 sells to purchasers located outside the
19 state for consumption in activities located
20 outside the state at least ninety percent
21 (90%) of the total electrical energy output
22 which qualifies for the specialized
23 treatment provided by the Energy Policy Act

1 of 1992, P.L. 102-486, 106 Stat. 2776, as
2 amended, and federal regulations adopted
3 pursuant thereto, and

4 (d) the facility is constructed on or after July
5 1, 1996,

6 (3) those administrative and facilities support
7 service activities defined or classified in the
8 NAICS Manual under Industry Group Nos. 5611 and
9 5612, Industry Nos. 51821, 52232, 56142 and 54191
10 or U.S. Industry Nos. 524291 and 551114,

11 (4) those professional, scientific and technical
12 service activities defined or classified in the
13 NAICS Manual under U.S. Industry Nos. 541710 and
14 541380,

15 (5) ~~warehouses which serve as~~ distribution centers
16 for retail or wholesale businesses defined or
17 classified in the NAICS Manual under Sector No.
18 42, if forty percent (40%) or more of the
19 inventory processed through such warehouse is
20 shipped out-of-state,

21 (6) those adjustment and collection service
22 activities defined or classified in the NAICS
23 Manual under U.S. Industry No. 561440, if

1 seventy-five percent (75%) of the loans to be
2 serviced were made by out-of-state debtors,

3 (7) (a) those air transportation activities defined
4 or classified in the NAICS Manual under
5 Industry Group No. 4811, if the following
6 facilities are located in this state:

7 (i) the corporate headquarters of an
8 establishment classified therein, and

9 (ii) a facility or facilities at which
10 reservations for transportation
11 provided by such an establishment are
12 processed, whether such services are
13 performed by employees of the
14 establishment, by employees of a
15 subsidiary of or other entity
16 affiliated with the establishment or by
17 employees of an entity with whom the
18 establishment has contracted for the
19 performance of such services; provided,
20 this provision shall not disqualify an
21 establishment which uses an out-of-
22 state entity or employees for some
23 reservations services, or

1 (b) those air transportation activities defined
2 or classified in the NAICS Manual under
3 Industry Group No. 4811, if an establishment
4 classified therein has or will have within
5 one (1) year sales of at least seventy-five
6 percent (75%) of its total sales, as
7 determined by the Incentive Approval
8 Committee pursuant to the provisions of
9 subsection B of this section, to out-of-
10 state customers or buyers, to in-state
11 customers or buyers if the product or
12 service is resold by the purchaser to an
13 out-of-state customer or buyer for ultimate
14 use, or to the federal government,

15 (8) the following, if an establishment classified
16 therein has or will have within one (1) year
17 sales of at least seventy-five percent (75%) of
18 its total sales, as determined by the Incentive
19 Approval Committee pursuant to the provisions of
20 subsection B of this section, to out-of-state
21 customers or buyers, to in-state customers or
22 buyers if the product or service is resold by the

1 purchaser to an out-of-state customer or buyer
2 for ultimate use, or to the federal government:

3 (a) those transportation and warehousing
4 activities defined or classified in the
5 NAICS Manual under Industry Subsector No.
6 493, if not otherwise listed in this
7 paragraph, Industry Subsector No. 484 and
8 Industry Group Nos. 4884 through 4889,

9 (b) those passenger transportation activities
10 defined or classified in the NAICS Manual
11 under Industry Nos. 561510, 561520 and
12 561599,

13 (c) those freight or cargo transportation
14 activities defined or classified in the
15 NAICS Manual under Industry No. 541614,

16 (d) those insurance activities defined or
17 classified in the NAICS Manual under
18 Industry Group No. 5241,

19 (e) those mailing, reproduction, commercial art
20 and photography and stenographic service
21 activities defined or classified in the
22 NAICS Manual under U.S. Industry Nos.
23 541430, 541860, 541922, 561439 and 561492,

- 1 (f) those services to dwellings and other
2 buildings, as defined or classified in the
3 NAICS Manual under Industry Group No. 5617,
4 excluding U.S. Industry No. 561730,
- 5 (g) those equipment rental and leasing
6 activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5323
8 and 5324,
- 9 (h) those employment services defined or
10 classified in the NAICS Manual under
11 Industry Group No. 5613,
- 12 (i) those information technology and other
13 computer-related service activities defined
14 or classified in the NAICS Manual under
15 Industry Group Nos. 5112, 5182, 5191 and
16 5415,
- 17 (j) those business support service activities
18 defined or classified in the NAICS Manual
19 under U.S. Industry Nos. 561410 through
20 561439, Industry Group No. 5616 and Industry
21 No. 51911,

- 1 (k) those medical and diagnostic laboratory
2 activities defined or classified in the
3 NAICS Manual under Industry Group No. 6215,
4 (l) those professional, scientific and technical
5 service activities defined or classified in
6 the NAICS Manual under Industry Group Nos.
7 5412, 5414, 5415, 5416 and 5417 ~~and~~ ,
8 Industry Nos. 54131, 54133, 54136, 54137 and
9 54182, and U.S. Industry No. 541990, if not
10 otherwise listed in this paragraph,
11 (m) those communication service activities
12 defined or classified in the NAICS Manual
13 under Industry Nos. 51741 and 51791,
14 (n) those refuse systems activities defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5622, provided that the
17 establishment is primarily engaged in the
18 capture and distribution of methane gas
19 produced within a landfill,
20 (o) general wholesale distribution of groceries,
21 defined or classified in the NAICS Manual
22 under Industry Group Nos. 4244 and 4245, and

1 (p) those activities relating to processing of
2 insurance claims, defined or classified in
3 the NAICS Manual under U.S. Industry Nos.
4 524210 and 524292; provided, activities
5 described in U.S. Industry Nos. 524210 and
6 524292 in the NAICS Manual other than
7 processing of insurance claims shall not be
8 included for purposes of this subdivision,

9 (9) those activities related to extraction of crude
10 petroleum and natural gas defined or classified
11 in the NAICS Manual under Industry Group No.
12 2111, subject to the limitations provided in
13 paragraph 2 of this subsection and paragraph 3 of
14 subsection B of this section, or

15 (10) those activities performed by the federal
16 civilian workforce at a facility of the Federal
17 Aviation Administration located in this state if
18 the Director of the Department of Commerce
19 determines or is notified that the federal
20 government is soliciting proposals or otherwise
21 inviting states to compete for additional federal
22 civilian employment or expansion of federal
23 civilian employment at such facilities.

1 b. An establishment described in subparagraph a of this
2 paragraph shall not be considered to be engaged in a
3 basic industry unless it offers, or will offer within
4 one hundred eighty (180) days of ~~the date it receives~~
5 ~~the first incentive payment pursuant to the provisions~~
6 ~~of Section 3601 et seq. of this title~~ employment, a
7 basic health benefits plan to the individuals it
8 employs in new direct jobs in this state which is
9 determined by the Oklahoma Department of Commerce to
10 consist of the following elements or elements
11 substantially equivalent thereto:

- 12 (1) not ~~less~~ more than fifty percent (50%) of the
13 premium shall be paid by the ~~employer~~ employee,
14 (2) coverage for basic hospital care,
15 (3) coverage for physician care,
16 (4) coverage for mental health care,
17 (5) coverage for substance abuse treatment,
18 (6) coverage for prescription drugs, and
19 (7) coverage for prenatal care;

20 2. "New direct job" means full-time-equivalent employment in
21 this state in an establishment which has qualified to receive an
22 incentive payment pursuant to the provisions of Section 3601 et seq.
23 of this title which employment did not exist in this state prior to

1 the date of approval by the Department of the application of the
2 establishment pursuant to the provisions of Section 3604 of this
3 title. "New direct job" shall include full-time-equivalent
4 employment in this state of employees who are employed by an
5 employment agency or similar entity other than the establishment
6 which has qualified to receive an incentive payment and who are
7 leased or otherwise provided under contract to the qualified
8 establishment, if such job did not exist in this state prior to the
9 date of approval by the Department of the application of the
10 establishment. A job shall be deemed to exist in this state prior
11 to approval of an application if the activities and functions for
12 which the particular job exists have been ongoing at any time within
13 six (6) months prior to such approval. With respect to
14 establishments defined in division (9) of subparagraph a of
15 paragraph 1 of this subsection, new direct jobs shall be limited to
16 those jobs directly comprising the corporate headquarters of or
17 directly relating to administrative, financial, engineering,
18 surveying, geological or geophysical services performed by the
19 establishment. Under no circumstances shall employment relating to
20 drilling or field services be considered new direct jobs;

21 3. "Estimated direct state benefits" means the tax revenues
22 projected by the Department to accrue to the state as a result of
23 new direct jobs;

1 4. "Estimated direct state costs" means the costs projected by
2 the Department to accrue to the state as a result of new direct
3 jobs. Such costs shall include, but not be limited to:

4 a. the costs of education of new state resident children,

5 b. the costs of public health, public safety and
6 transportation services to be provided to new state
7 residents,

8 c. the costs of other state services to be provided to
9 new state residents, and

10 d. the costs of other state services;

11 5. "Estimated net direct state benefits" means the estimated
12 direct state benefits less the estimated direct state costs;

13 6. "Net benefit rate" means the estimated net direct state
14 benefits computed as a percentage of gross payroll; provided:

15 a. except as otherwise provided in this paragraph, the
16 net benefit rate may be variable and shall not exceed
17 five percent (5%),

18 b. the net benefit rate shall not exceed six percent (6%)
19 in connection with an establishment which is owned and
20 operated by an entity which has been awarded a United
21 States Department of Defense contract for which:

- 1 (1) bids were solicited and accepted by the United
2 States Department of Defense from facilities
3 located outside this state,
4 (2) the term is or is renewable for not less than
5 twenty (20) years, and
6 (3) the average annual salary, excluding benefits
7 which are not subject to Oklahoma income taxes,
8 for new direct jobs created as a direct result of
9 the awarding of the contract is projected by the
10 Department of Commerce to equal or exceed Forty
11 Thousand Dollars (\$40,000.00) within three (3)
12 years of the date of the first incentive payment,
13 c. except as otherwise provided in subparagraph d of this
14 paragraph, in no event shall incentive payments,
15 cumulatively, exceed the estimated net direct state
16 benefits,
17 d. the net benefit rate shall be five percent (5%) for an
18 establishment locating:
19 (1) in an opportunity zone located in a high-
20 employment county, as such terms are defined in
21 subsection G of Section 3604 of this title, or
22 (2) in a county in which:

- 1 (a) the per capita personal income, as
2 determined by the Department, is eighty-five
3 percent (85%) or less of the statewide
4 average per capita personal income,
5 (b) the population has decreased over the
6 previous ten (10) years, as determined by
7 the State Data Center based on the most
8 recent U.S. Department of Commerce data, or
9 (c) the unemployment rate exceeds the lesser of
10 five percent (5%) or two percentage points
11 above the state average unemployment rate as
12 certified by the Oklahoma Employment
13 Security Commission, and
14 e. the net benefit rate shall not exceed six percent (6%)
15 in connection with an establishment which:
16 (1) is, as of the date of application, receiving
17 incentive payments pursuant to the Oklahoma
18 Quality Jobs Program Act and has been receiving
19 such payments for at least one (1) year prior to
20 the date of application, and
21 (2) expands its operations in this state by creating
22 additional new direct jobs which pay average
23 annualized wages which equal or exceed one

1 hundred fifty percent (150%) of the average
2 annualized wages of new direct jobs on which
3 incentive payments were received during the
4 preceding calendar year.

5 Incentive payments made pursuant to the provisions of this
6 subparagraph shall be based upon payroll associated with such new
7 direct jobs; ~~provided, the establishment may apply for payments to~~
8 ~~begin on a date certain specified in the application, which shall~~
9 ~~not be more than twenty four (24) months from the date the~~
10 ~~application is submitted to the Department.~~ For purposes of this
11 subparagraph, the amount of health insurance premiums or other
12 benefits paid by the establishment shall not be included for
13 purposes of computation of the average annualized wage;

14 7. "Gross payroll" means wages, as defined in Section 2385.1 of
15 this title for new direct jobs;

16 8. a. "Establishment" means any business or governmental
17 entity, no matter what legal form, including, but not
18 limited to, a sole proprietorship; partnership;
19 limited liability company; corporation or combination
20 of corporations which have a central parent
21 corporation which makes corporate management decisions
22 such as those involving consolidation, acquisition,
23 merger or expansion; federal agency; political

1 subdivision of the State of Oklahoma; or trust
2 authority; provided, distinct, identifiable subunits
3 of such entities may be determined to be an
4 establishment, for all purposes of Section 3601 et
5 seq. of this title, by the Department subject to the
6 following conditions:

- 7 (1) the entity must have a minimum payroll of Two
8 Million Five Hundred Thousand Dollars
9 (\$2,500,000.00) and the subunit must also have or
10 will have a minimum payroll of Two Million Five
11 Hundred Thousand Dollars (\$2,500,000.00),
12 (2) the subunit is engaged in an activity or service
13 or produces a product which is demonstratively
14 independent and separate from the entity's other
15 activities, services or products and could be
16 conducted or produced in the absence of any other
17 activity, service or production of the entity,
18 (3) has an accounting system capable of tracking or
19 facilitating an audit of the subunit's payroll,
20 expenses, revenue and production. Limited
21 interunit overlap of administrative and
22 purchasing functions shall not disqualify a

1 subunit from consideration as an establishment by
2 the Department,

3 (4) the entity has not previously had a subunit
4 determined to be an establishment pursuant to
5 this section; provided, the restriction set forth
6 in this division shall not apply to subunits
7 which qualify pursuant to the provisions of
8 subparagraph b of paragraph 6 of this subsection,
9 and

10 (5) it is determined by the Department that the
11 entity will have a probable net gain in total
12 employment within the incentive period.

13 b. The Department may promulgate rules to further limit
14 the circumstances under which a subunit may be
15 considered an establishment. The Department shall
16 promulgate rules to determine whether a subunit of an
17 entity achieves a net gain in total employment. The
18 Department shall establish criteria for determining
19 the period of time within which such gain must be
20 demonstrated and a method for determining net gain in
21 total employment;

22 9. "NAICS Manual" means any manual, book or other publication
23 containing the North American Industry Classification System, United

1 States, 1997, promulgated by the Office of Management and Budget of
2 the United States of America, or the latest revised edition;

3 10. "SIC Manual" means the 1987 revision to the Standard
4 Industrial Classification Manual, promulgated by the Office of
5 Management and Budget of the United States of America; ~~and~~

6 11. "Start date" means the date on which an establishment may
7 begin accruing benefits for the creation of new direct jobs, which
8 date shall be determined by the Department; and

9 12. "Effective date" means the date of approval of a contract
10 under which incentive payments will be made pursuant to the Oklahoma
11 Quality Jobs Program Act, which shall be the date the signed and
12 accepted incentive contract is received by the Department; provided,
13 an approved project may have a start date which is different from
14 the effective date.

15 B. The Incentive Approval Committee is hereby created and shall
16 consist of the Director of State Finance, the Director of the
17 Department and one member of the Oklahoma Tax Commission appointed
18 by the Tax Commission, or a designee from each agency approved by
19 such member. It shall be the duty of the Committee to determine:

20 1. Upon initial application on a form approved by the
21 Committee, if an establishment is engaged in a basic industry as
22 defined in subdivision (b) of division (7) or in subdivisions (a)
23 through (p) of division (8) of subparagraph a of paragraph 1 of

1 subsection A of this section or as otherwise provided by subsection
2 C of this section;

3 2. If an establishment would have been defined as a "basic
4 industry" prior to the amendments to this section to convert from
5 SIC Codes to NAICS Codes. If the Committee so determines, the
6 establishment shall be considered as a "basic industry" for purposes
7 of the Oklahoma Quality Jobs Program Act; and

8 3. If employees of an establishment as defined in division (9)
9 of subparagraph a of paragraph 1 of subsection A of this section
10 meet the requirements to be considered employed in new direct jobs
11 as specified in paragraph 2 of subsection A of this section.

12 C. For an establishment defined as a "basic industry" pursuant
13 to division (4) of subparagraph a of paragraph 1 of subsection A of
14 this section, the Incentive Approval Committee shall consist of the
15 members provided by subsection B of this section and the President
16 of the Oklahoma Center for the Advancement of Science and
17 Technology, or a designee from the Center appointed by the
18 President.

19 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3604, as
20 last amended by Section 2, Chapter 457, O.S.L. 2004 (68 O.S. Supp.
21 2005, Section 3604), is amended to read as follows:

22 Section 3604. A. Except as otherwise provided in subsection I
23 of this section, an establishment which meets the qualifications

1 specified in the Oklahoma Quality Jobs Program Act may receive
2 quarterly incentive payments for a ten-year period from the Oklahoma
3 Tax Commission pursuant to the provisions of the Oklahoma Quality
4 Jobs Program Act in an amount which shall be equal to the net
5 benefit rate multiplied by the actual gross payroll of new direct
6 jobs for a calendar quarter as verified by the Oklahoma Employment
7 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 from the date the application is submitted to the
15 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 start
23 date; and

1 3. Have a number of full-time-equivalent employees residing in
2 this state and working an annual average of ~~twenty-five (25)~~ thirty
3 (30) or more hours per week in new direct jobs equal to or in excess
4 of eighty percent (80%) of the total number of new direct jobs.

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

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

10 a. have an annual gross payroll for new direct jobs
11 projected by the Department to equal or exceed One
12 Million Five Hundred Thousand Dollars (\$1,500,000.00)
13 within three (3) years of the start date and make, or
14 which will make within one (1) year, at least seventy-
15 five percent (75%) of its total sales, as determined
16 by the Incentive Approval Committee pursuant to the
17 provisions of subsection B of Section 3603 of this
18 title, to out-of-state customers or buyers, to in-
19 state customers or buyers if the product or service is
20 resold by the purchaser to an out-of-state customer or
21 buyer for ultimate use, or to the federal government,
22 unless the annual gross payroll equals or exceeds Two
23 Million Five Hundred Thousand Dollars (\$2,500,000.00)

1 in which case the requirements for purchase of output
2 provided by this subparagraph shall not apply, and
3 b. have a number of full-time-equivalent employees
4 working an average of twenty-five (25) or more hours
5 per week in new direct jobs equal to or in excess of
6 eighty percent (80%) of the total number of new direct
7 jobs; and

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

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

14 b. have a number of full-time-equivalent employees
15 working an average of twenty-five (25) or more hours
16 per 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,

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

1 all other requirements of the Oklahoma Quality Jobs Program Act
2 other than the exemptions provided by this subsection.

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

6 a. the site designated by the entity does meet one or
7 more of the requirements listed in paragraph 1 of this
8 subsection, and

9 b. the site is being or has been remediated to a level
10 which is consistent with the intended use of the
11 property.

12 In making its determination, the Department of Environmental
13 Quality may rely on existing data and information available to it,
14 but may also require the applying entity to provide additional data
15 and information as necessary.

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

22 F. Except as otherwise provided by subsection G of this
23 section, for applications submitted on and after the effective date

1 of this act, in order to qualify to receive incentive payments as
2 authorized by the Oklahoma Quality Jobs Program Act, in addition to
3 other qualifications specified herein, an establishment shall be
4 required to pay new direct jobs an average annualized wage which
5 equals or exceeds:

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

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

20 Provided, no average wage requirement shall exceed Twenty-five
21 Thousand Dollars (\$25,000.00), in any county. This maximum wage
22 threshold shall be indexed and modified from time to time based on
23 the latest Consumer Price Index year-to-date percent change release

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

3 G. As used in this subsection, "opportunity zone" means one or
4 more census tracts in which, according to the most recent federal
5 decennial census, at least thirty percent (30%) of the residents
6 have annual gross household incomes from all sources below the
7 poverty guidelines established by the U.S. Department of Health and
8 Human Services. An establishment which is otherwise qualified to
9 receive incentive payments and which locates its principal business
10 activity in an opportunity zone shall not be subject to the
11 requirements of subsection F of this section.

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

14 I. If the applicant is determined to be qualified by the
15 Department and is not subject to the provisions of subparagraph d of
16 paragraph 6 of subsection A of Section 3603 of this title, the
17 Department shall conduct a cost/benefit analysis to determine the
18 estimated net direct state benefits and the net benefit rate
19 applicable for a ten-year period and to estimate the amount of gross
20 payroll for a ten-year period. In conducting such cost/benefit
21 analysis, the Department shall consider quantitative factors, such
22 as the anticipated level of new tax revenues to the state along with
23 the added cost to the state of providing services, and such other

1 criteria as deemed appropriate by the Department. In no event shall
2 incentive payments, cumulatively, exceed the estimated net direct
3 state benefits, except for applicants subject to the provisions of
4 subparagraph d of paragraph 6 of subsection A of Section 3603 of
5 this title.

6 J. Upon approval of such an application, the Department shall
7 notify the Oklahoma Tax Commission and shall provide it with a copy
8 of the application and the results of the cost/benefit analysis.
9 The Tax Commission may require the qualified establishment to submit
10 such additional information as may be necessary to administer the
11 provisions of the Oklahoma Quality Jobs Program Act. The approved
12 establishment shall report to the Tax Commission periodically to
13 show its continued eligibility for incentive payments, as provided
14 in Section 3606 of this title. The establishment may be audited by
15 the Tax Commission to verify such eligibility. Once the
16 establishment is approved, an agreement shall be deemed to exist
17 between the establishment and the State of Oklahoma, requiring the
18 continued incentive payment to be made as long as the establishment
19 retains its eligibility as defined in and established pursuant to
20 this section and Sections 3603 and 3606 of this title and within the
21 limitations contained in the Oklahoma Quality Jobs Program Act,
22 which existed at the time of such approval.

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

20 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3606, as
21 amended by Section 3, Chapter 457, O.S.L. 2004 (68 O.S. Supp. 2005,
22 Section 3606), is amended to read as follows:

1 Section 3606. A. As soon as practicable after the end of a
2 calendar quarter for which an establishment has qualified to receive
3 an incentive payment, the establishment shall file a claim for the
4 payment with the Oklahoma Tax Commission and shall specify the
5 actual number and gross payroll of new direct jobs for the
6 establishment for the calendar quarter; provided, in no event shall
7 the first claim for incentive payments be filed later than three (3)
8 years from the start date designated by the Oklahoma Department of
9 Commerce. The Tax Commission shall verify the actual gross payroll
10 for new direct jobs for the establishment for such calendar quarter.
11 If the Tax Commission is not able to provide such verification
12 utilizing all available resources, the Tax Commission may request
13 such additional information from the establishment as may be
14 necessary or may request the establishment to revise its claim.

15 B. If the actual verified gross payroll for four (4)
16 consecutive calendar quarters does not equal or exceed the
17 applicable total required by Section 3604 of this title within three
18 (3) years of the start date, or does not equal or exceed the
19 applicable total required by Section 3604 of this title at any other
20 time during the ten-year period after the start date, the incentive
21 payments shall not be made and shall not be resumed until such time
22 as the actual verified gross payroll equals or exceeds the amounts
23 specified in Section 3604 of this title.

1 C. ~~If the average annualized wage required for an establishment~~
2 ~~locating its principal business activity in a municipality with a~~
3 ~~population which exceeds sixty thousand (60,000) persons located~~
4 ~~within a metropolitan statistical area with a population which~~
5 ~~exceeds seven hundred thousand (700,000) persons, as determined by~~
6 ~~the Oklahoma State Data Center based on the most recent U.S.~~
7 ~~Department of Commerce data, the principal seat of government of~~
8 ~~which is located in a high-employment county subject to the~~
9 ~~provisions of subsection F of Section 3604 of this title,~~ does not
10 equal or exceed the amount specified in paragraph 1 or 2 of
11 subsection F of Section 3604 of this title ~~within three (3) years of~~
12 ~~the date of the first incentive payment~~ during any calendar quarter,
13 the incentive payments shall not be made and shall not be resumed
14 until such time as such requirements are met.

15 D. In no event shall incentive payments, cumulatively, exceed
16 the estimated net direct state benefits, except for establishments
17 subject to the provisions of subparagraph d of paragraph 6 of
18 subsection A of Section 3603 of this title.

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

1 gross payroll anticipated from the expansion only, pursuant to
2 Section 3604 of this title.

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

13 G. As soon as practicable after verification of the actual
14 gross payroll as required by this section and except as otherwise
15 provided by subsection H K of Section 3604 of this title, the Tax
16 Commission shall issue a warrant to the establishment in the amount
17 of the net benefit rate multiplied by the actual gross payroll as
18 determined pursuant to subsection A of this section for the calendar
19 quarter.

20 SECTION 4. AMENDATORY 68 O.S. 2001, Section 3903, as
21 last amended by Section 2, Chapter 352, O.S.L. 2005 (68 O.S. Supp.
22 2005, Section 3903), is amended to read as follows:

1 Section 3903. As used in the Small Employer Quality Jobs
2 Incentive Act:

3 1. "Basic industry" means a basic industry as defined under the
4 Oklahoma Quality Jobs Program Act in divisions (1) through ~~(8)~~ (9)
5 of subparagraph a of paragraph 1 of subsection A of Section 3603 of
6 this title, excluding those activities described in division ~~(9)~~
7 (10) of subparagraph a of paragraph 1 of subsection A of Section
8 3603 of this title. Provided, for the purposes of the Small
9 Employer Quality Jobs Incentive Act, the determination required by
10 subdivision (b) of division (7) or division (8) of subparagraph a of
11 paragraph 1 of subsection A of Section 3603 of this title shall be
12 made by the Oklahoma Department of Commerce and not the Incentive
13 Approval Committee;

14 2. "Establishment" means any business, no matter what legal
15 form, including, but not limited to, a sole proprietorship,
16 partnership, corporation, or limited liability corporation located
17 in a county with a population of not more than two hundred thousand
18 (200,000) persons, as determined by the Oklahoma State Data Center
19 based on the most recent U.S. Department of Commerce data or located
20 in an "opportunity zone"; provided, a business classified as
21 research and development in the physical, engineering and life
22 sciences as described under U.S. Industry Number 541710 or
23 classified as a testing laboratory as described under U.S. Industry

1 Number 541380 in the North American Industry Classification System
2 (NAICS) Manual shall be considered to be an establishment for
3 purposes of the Small Employer Quality Jobs Incentive Act regardless
4 of the population of the county in which the establishment is
5 located. As used in this paragraph, "opportunity zone" means one or
6 more census tracts in which, according to the most recent Federal
7 Decennial Census, at least thirty percent (30%) of the residents
8 have annual gross household incomes from all sources below the
9 poverty guidelines established by the U.S. Department of Health and
10 Human Services;

11 3. "Estimated direct state benefits" means the tax revenues
12 projected by the Oklahoma Department of Commerce to accrue to the
13 state as a result of new direct jobs;

14 4. "Estimated direct state costs" means the costs projected by
15 the Department to accrue to the state as a result of new direct
16 jobs. Such costs shall include, but not be limited to:

- 17 a. the costs of education of new state resident children,
- 18 b. the costs of public health, public safety and
19 transportation services to be provided to new state
20 residents,
- 21 c. the costs of other state services to be provided to
22 new state residents, and
- 23 d. the costs of other state services;

1 5. "Estimated net direct state benefits" means the estimated
2 direct state benefits less the estimated direct state costs;

3 6. "Full-time employment" means employment of persons residing
4 in this state and working for ~~twenty-five (25)~~ thirty (30) hours per
5 week or more in this state, which has a minimum six-month duration
6 during any twelve-month period;

7 7. "Gross taxable payroll" means wages, as defined in Section
8 2385.1 of this title, for new direct jobs;

9 8. "Net benefit rate" means the estimated net direct state
10 benefits computed as a percentage of gross payroll; provided:

11 a. the net benefit rate may be variable and shall not
12 exceed five percent (5%), and

13 b. in no event shall incentive payments, cumulatively,
14 exceed the estimated net direct state benefits; and

15 9. "New direct job" means full-time employment which did not
16 exist in this state prior to the date of approval, by the Oklahoma
17 Department of Commerce, of an application made pursuant to the Small
18 Employer Quality Jobs Incentive Act. A job shall be deemed to exist
19 in this state prior to approval of an application if the activities
20 and functions for which the particular job exists have been ongoing
21 at anytime within six (6) months prior to such approval.

1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 3904, as
2 last amended by Section 3, Chapter 352, O.S.L. 2005 (68 O.S. Supp.
3 2005, Section 3904), is amended to read as follows:

4 Section 3904. A. An establishment which meets the
5 qualifications specified in the Small Employer Quality Jobs
6 Incentive Act may receive quarterly incentive payments for a seven-
7 year period from the Oklahoma Tax Commission pursuant to the
8 provisions of the Small Employer Quality Jobs Incentive Act in an
9 amount equal to the net benefit rate multiplied by the actual gross
10 taxable payroll of new direct jobs as verified by the Tax
11 Commission.

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

21 C. Before approving an application for incentive payments, the
22 Department must first determine that the applicant meets the
23 following requirements:

- 1 1. Be engaged in a basic industry;
- 2 2. Has no more than ninety full-time employees in this state on
3 the date of application nor an average of more than ninety full-time
4 employees in this state during the four calendar quarters
5 immediately preceding the date of application;
- 6 3. Has a projected minimum employment, as determined by the
7 Department, of new direct jobs within twelve (12) months of the date
8 of application as follows:
- 9 a. if the establishment is located in a municipality with
10 a population less than three thousand five hundred
11 (3,500) persons, as determined by the Oklahoma State
12 Data Center based on the most recent U.S. Department
13 of Commerce data, or if the establishment is located
14 in an unincorporated area and the largest municipality
15 within twenty (20) miles of the establishment is such
16 a municipality, five new direct jobs,
- 17 b. if the establishment is located in a municipality with
18 a population of three thousand five hundred (3,500)
19 persons or more but less than seven thousand (7,000)
20 persons, as determined by the Oklahoma State Data
21 Center based on the most recent U.S. Department of
22 Commerce data, or if the establishment is located in
23 an unincorporated area and the largest municipality

1 within twenty (20) miles of the establishment is such
2 a municipality, ten new direct jobs, and
3 c. if the establishment is located in a municipality with
4 a population of seven thousand (7,000) persons or
5 more, as determined by the Oklahoma State Data Center
6 based on the most recent U.S. Department of Commerce
7 data, or if the establishment is located in an
8 unincorporated area and the largest municipality
9 within twenty (20) miles of the establishment is such
10 a municipality, fifteen new direct jobs.

11 Provided, for an establishment engaged in software publishing as
12 defined or classified in the NAICS Manual under Industry Group No.
13 5112, data processing, hosting and related services as defined or
14 classified in the NAICS Manual under Industry Group No. 5182,
15 computer systems design and related services as defined or
16 classified in the NAICS Manual under Industry Group No. 5415,
17 scientific research and development services as defined or
18 classified in the NAICS Manual under Industry Group No. 5417,
19 medical and diagnostic laboratories as defined or classified in the
20 NAICS Manual under Industry Group No. 6215 or testing laboratories
21 as defined or classified in the NAICS Manual under U.S. Industry No.
22 541380, the projected minimum employment requirements of this

1 paragraph must be achieved within thirty-six (36) months of the date
2 of application;

3 4. Has or will have within twelve (12) months of the date of
4 application, as determined by the Department, sales of at least
5 seventy-five percent (75%) of its total sales to out-of-state
6 customers or buyers, to in-state customers or buyers if the product
7 or service is resold by the purchaser to an out-of-state customer or
8 buyer for ultimate use, or to the federal government, except that:

- 9 a. those establishments in the NAICS Manual under the
10 U.S. Industry No. 541710 or 541380 are excused from
11 the seventy-five percent (75%) out-of-state sales
12 requirement,
- 13 b. warehouses that serve as distribution centers for
14 retail or wholesale businesses shall be required to
15 distribute forty percent (40%) of inventory to out-of-
16 state locations, and
- 17 c. adjustment and collection services activities defined
18 or classified in the NAICS Manual under U.S. Industry
19 No. 561440 shall be required to have seventy-five
20 percent (75%) of loans to be serviced made by out-of-
21 state debtors;

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

- 1 a. one hundred twenty-five percent (125%) of the average
2 county wage as that percentage is determined by the
3 Oklahoma State Data Center based on the most recent
4 U.S. Department of Commerce data for the county in
5 which the new direct jobs are located. For purposes
6 of this subparagraph, health care premiums paid by the
7 applicant for individuals in new direct jobs shall be
8 included in the annualized wage, or
- 9 b. one hundred ten percent (110%) of the average county
10 wage as that percentage is determined by the Oklahoma
11 State Data Center based upon the most recent U.S.
12 Department of Commerce data for the county in which
13 the new direct jobs are located. For purposes of this
14 subparagraph, health care premiums paid by the
15 applicant for individuals in new direct jobs shall not
16 be included in the annualized wage;

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

1 7. Has not received incentive payments under the Oklahoma
2 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former
3 Military Facility Development Act; and

4 8. Is not qualified for approval of an application for
5 incentive payments under the Oklahoma Quality Jobs Program Act, the
6 Saving Quality Jobs Act, or the Former Military Facility Development
7 Act.

8 D. The Oklahoma Department of Commerce shall determine if an
9 applicant is qualified to receive the incentive payment. Upon
10 qualifying the applicant, the Department shall notify the Tax
11 Commission and shall provide it with a copy of the application, and
12 approval which shall provide the number of persons employed by the
13 applicant upon the date of approval and the maximum total incentives
14 which may be paid to the applicant during the seven-year period.
15 The Tax Commission may require the qualified establishment to submit
16 additional information as may be necessary to administer the
17 provisions of the Small Employer Quality Jobs Incentive Act. The
18 approved establishment shall report to the Tax Commission quarterly
19 to show its continued eligibility for incentive payments, as
20 provided in Section 3905 of this title. Establishments may be
21 audited by the Tax Commission to verify such eligibility. Once the
22 establishment is approved, an agreement shall be deemed to exist
23 between the establishment and the State of Oklahoma, requiring

1 incentive payments to be made for a seven-year period as long as the
2 establishment retains its eligibility and within the limitations of
3 the Small Employer Quality Jobs Incentive Act which existed at the
4 time of such approval. Any establishment which has been approved
5 for incentive payments prior to July 1, 2002, shall continue to
6 receive such payments pursuant to the laws as they existed prior to
7 July 1, 2002, for any period of time of the original five-year
8 period for such payments remaining after July 1, 2002.

9 SECTION 6. AMENDATORY 68 O.S. 2001, Section 3905, as
10 amended by Section 4, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2005,
11 Section 3905), is amended to read as follows:

12 Section 3905. A. 1. Beginning with the first complete
13 calendar quarter after the application of the establishment is
14 approved by the Oklahoma Department of Commerce, the establishment
15 shall begin filing quarterly reports with the Oklahoma Tax
16 Commission that specify the actual number and individual gross
17 taxable payroll of new direct jobs for the establishment and such
18 other information as required by the Tax Commission. In no event
19 shall the first claim for incentive payments be filed later than
20 three (3) years from the start date designated by the Department.
21 The Tax Commission shall verify the actual individual gross taxable
22 payroll for new direct jobs. If the Tax Commission is not able to
23 provide such verification utilizing all available resources, the Tax

1 Commission may request additional information from the establishment
2 as may be necessary or may request the establishment to revise its
3 reports.

4 The establishment shall continue filing such reports during the
5 seven-year incentive period or until it is no longer qualified to
6 receive incentive payments. Such reports shall constitute a claim
7 for quarterly incentive payments by the establishment.

8 2. Upon receipt of a report for the initial calendar quarter of
9 the incentive period and for each subsequent calendar quarter
10 thereafter, the Tax Commission shall determine if the establishment
11 has met the following requirements:

- 12 a. created and or maintained the minimum number of new
13 direct jobs as specified in paragraph 3 of subsection
14 C of Section 3904 of this title, and
15 b. paid the individuals it employed in new direct jobs an
16 annualized wage which equaled or exceeded the
17 applicable percentage of the average county wage as
18 that percentage was determined by the Oklahoma
19 Department of Commerce upon approval of the
20 application.

21 3. Upon determining that an establishment has met the
22 requirements of paragraph 2 of this subsection for the initial
23 calendar quarter of the incentive period, the Tax Commission shall

1 issue a warrant to the establishment in an amount which shall be
2 equal to the net benefit rate multiplied by the amount of gross
3 taxable payroll of new direct jobs actually paid by the
4 establishment.

5 B. Except as provided in subsection C of this section, the
6 quarterly incentive payment provided for in subsection A of this
7 section shall be allowed in each of the twenty-seven subsequent
8 calendar quarters.

9 C. 1. An establishment which does not meet the requirements of
10 paragraph 2 of subsection A of this section within twelve (12)
11 months of the date of its application shall be ineligible to receive
12 any incentive payments pursuant to its application and approval.

13 2. An establishment which at any time during the twenty-seven
14 subsequent calendar quarters does not meet the requirements of
15 paragraph 2 of subsection A of this section shall be ineligible to
16 receive an incentive payment during the calendar quarter in which
17 such requirements are not met.

18 SECTION 7. This act shall become effective July 1, 2006.

19 SECTION 8. It being immediately necessary for the preservation
20 of the public peace, health and 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.

23 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,
24 As Amended and Coauthored.