

1 ENGROSSED HOUSE AMENDMENT
TO

2 ENGROSSED SENATE BILL NO. 2153

By: Mazzei of the Senate

3 and

4 Peterson (Ron) of the
5 House

6
7
8 (revenue and taxation - Oklahoma Quality Jobs
9 Program Act - modifying definitions, requirements
10 and procedures -
11 effective date)

12

13

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
15 entire bill and insert

16

17 "An Act relating to revenue and taxation; amending 68
18 O.S. 2001, Sections 3603, 3604 and 3606, as last
19 amended by Sections 1, 2 and 3 of Enrolled Senate
20 Bill No. 1819 of the 2nd Session of the 51st
21 Oklahoma Legislature and 3607, which relate to the
22 Oklahoma Quality Jobs Program Act; modifying
23 definitions; modifying requirements relating to
24 application for incentive payments; modifying the
beginning date of time period used for certain
analysis of applicant for incentive payments;
modifying reference to document; modifying time
period for providing information to Oklahoma Tax
Commission; modifying time period during which
specified claim must be filed; deleting prohibition
against filing certain claim during certain time
period; authorizing filing of extension and
providing circumstances therefore; providing that

1 certain rights are forfeited under specified
2 circumstances; limiting eligibility for certain
3 credit or exemption; and providing an effective
4 date.

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

6 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
7 last amended by Section 1 of Enrolled Senate Bill No. 1819 of the
8 2nd Session of the 51st Oklahoma Legislature, is amended to read as
9 follows:

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

12 1. a. "Basic industry" means:

13 (1) those manufacturing activities defined or
14 classified in the NAICS Manual under Industry
15 Sector Nos. 31, 32 and 33, Industry Group No.
16 5111 or Industry No. 11331,

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

21 (a) an establishment engaged therein qualifies
22 as an exempt wholesale generator as defined
23 by 15 U.S.C., Section 79z-5a,
24

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

10 (c) the exempt wholesale generator facility
11 sells to purchasers located outside the
12 state for consumption in activities located
13 outside the state at least ninety percent
14 (90%) of the total electrical energy output
15 which qualifies for the specialized
16 treatment provided by the Energy Policy Act
17 of 1992, P.L. 102-486, 106 Stat. 2776, as
18 amended, and federal regulations adopted
19 pursuant thereto, and

20 (d) the facility is constructed on or after July
21 1, 1996,

22 (3) those administrative and facilities support
23 service activities defined or classified in the
24 NAICS Manual under Industry Group Nos. 5611 and

1 5612, Industry Nos. 51821, 518112, 52232, 56142
2 and 54191 or U.S. Industry Nos. 524291 and
3 551114, and those other support activities for
4 air transportation defined or classified in the
5 NAICS Manual under Industry Group No. 488190,

6 (4) those professional, scientific and technical
7 service activities defined or classified in the
8 NAICS Manual under U.S. Industry Nos. 541710 and
9 541380,

10 (5) distribution centers for retail or wholesale
11 businesses defined or classified in the NAICS
12 Manual under Sector No. 42, if forty percent
13 (40%) or more of the inventory processed through
14 such warehouse is shipped out-of-state,

15 (6) those adjustment and collection service
16 activities defined or classified in the NAICS
17 Manual under U.S. Industry No. 561440, if
18 seventy-five percent (75%) of the loans to be
19 serviced were made by out-of-state debtors,

20 (7) (a) those air transportation activities defined
21 or classified in the NAICS Manual under
22 Industry Group No. 4811, if the following
23 facilities are located in this state:
24

1 (i) the corporate headquarters of an
2 establishment classified therein, and
3 (ii) a facility or facilities at which
4 reservations for transportation
5 provided by such an establishment are
6 processed, whether such services are
7 performed by employees of the
8 establishment, by employees of a
9 subsidiary of or other entity
10 affiliated with the establishment or by
11 employees of an entity with whom the
12 establishment has contracted for the
13 performance of such services; provided,
14 this provision shall not disqualify an
15 establishment which uses an out-of-
16 state entity or employees for some
17 reservations services, or

18 (b) those air transportation activities defined
19 or classified in the NAICS Manual under
20 Industry Group No. 4811, if an establishment
21 classified therein has or will have within
22 one (1) year sales of at least seventy-five
23 percent (75%) of its total sales, as
24 determined by the Incentive Approval

1 Committee pursuant to the provisions of
2 subsection B of this section, to out-of-
3 state customers or buyers, to in-state
4 customers or buyers if the product or
5 service is resold by the purchaser to an
6 out-of-state customer or buyer for ultimate
7 use, or to the federal government,

8 (8) flight training services activities defined or
9 classified in the NAICS Manual under U.S.
10 Industry Group No. 611512, which for purposes of
11 Section 3601 et seq. of this title shall include
12 new direct jobs for which gross payroll existed
13 on or after January 1, 2003, as identified in the
14 NAICS Manual,

15 (9) 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
23 purchaser to an out-of-state customer or buyer
24 for ultimate use, or to the federal government:

- 1 (a) those transportation and warehousing
2 activities defined or classified in the
3 NAICS Manual under Industry Subsector No.
4 493, if not otherwise listed in this
5 paragraph, Industry Subsector No. 484 and
6 Industry Group Nos. 4884 through 4889,
- 7 (b) those passenger transportation activities
8 defined or classified in the NAICS Manual
9 under Industry Nos. 561510, 561520 and
10 561599,
- 11 (c) those freight or cargo transportation
12 activities defined or classified in the
13 NAICS Manual under Industry No. 541614,
- 14 (d) those insurance activities defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5241,
- 17 (e) those mailing, reproduction, commercial art
18 and photography and stenographic service
19 activities defined or classified in the
20 NAICS Manual under U.S. Industry Nos.
21 541430, 541860, 541922, 561439 and 561492,
- 22 (f) those services to dwellings and other
23 buildings, as defined or classified in the
24

1 NAICS Manual under Industry Group No. 5617,
2 excluding U.S. Industry No. 561730,

3 (g) those equipment rental and leasing
4 activities defined or classified in the
5 NAICS Manual under Industry Group Nos. 5323
6 and 5324,

7 (h) those employment services defined or
8 classified in the NAICS Manual under
9 Industry Group No. 5613,

10 (i) those information technology and other
11 computer-related service activities defined
12 or classified in the NAICS Manual under
13 Industry Group Nos. 5112, 5182, 5191 and
14 5415,

15 (j) those business support service activities
16 defined or classified in the NAICS Manual
17 under U.S. Industry Nos. 561410 through
18 561439, Industry Group No. 5616 and Industry
19 No. 51911,

20 (k) those medical and diagnostic laboratory
21 activities defined or classified in the
22 NAICS Manual under Industry Group No. 6215,

23 (l) those professional, scientific and technical
24 service activities defined or classified in

1 the NAICS Manual under Industry Group Nos.
2 5412, 5414, 5415, 5416 and 5417, Industry
3 Nos. 54131, 54133, 54136, 54137 and 54182,
4 and U.S. Industry No. 541990, if not
5 otherwise listed in this paragraph,

6 (m) those communication service activities
7 defined or classified in the NAICS Manual
8 under Industry Nos. 51741 and 51791,

9 (n) those refuse systems activities defined or
10 classified in the NAICS Manual under
11 Industry Group No. 5622, provided that the
12 establishment is primarily engaged in the
13 capture and distribution of methane gas
14 produced within a landfill,

15 (o) general wholesale distribution of groceries,
16 defined or classified in the NAICS Manual
17 under Industry Group Nos. 4244 and 4245,

18 (p) those activities relating to processing of
19 insurance claims, defined or classified in
20 the NAICS Manual under U.S. Industry Nos.
21 524210 and 524292; provided, activities
22 described in U.S. Industry Nos. 524210 and
23 524292 in the NAICS Manual other than
24 processing of insurance claims shall not be

1 included for purposes of this subdivision,
2 and

3 (q) those agricultural activities classified in
4 the NAICS Manual under U.S. Industry Nos.
5 112120 and 112310;

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

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

21 (12) those activities defined or classified in the
22 NAICS Manual under U.S. Industry No. 711211 (2007
23 version).

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 employment, a basic
5 health benefits plan to the individuals it employs in
6 new direct jobs in this state which is determined by
7 the Oklahoma Department of Commerce to consist of the
8 following elements or elements substantially
9 equivalent thereto:

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

18 2. "Change in control event" means the transfer to one or more
19 unrelated establishments or unrelated persons, of either:

- 20 a. beneficial ownership of more than fifty percent (50%)
21 in value and more than fifty percent (50%) in voting
22 power of the outstanding equity securities of the
23 transferred establishment, or
24

1 b. more than fifty percent (50%) in value of the assets
2 of an establishment.

3 A transferor shall be treated as related to a transferee if more
4 than fifty percent (50%) of the voting interests of the transferor
5 and transferee are owned, directly or indirectly, by the other or
6 are owned, directly or indirectly, by the same person or persons,
7 unless such transferred establishment has an outstanding class of
8 equity securities registered under Sections 12(b) or 15(d) of the
9 Securities Exchange Act of 1934, as amended, in which event the
10 transferor and transferee will be treated as unrelated; provided, an
11 establishment applying for the Oklahoma Quality Jobs Program Act as
12 a result of a change of control event is required to apply within
13 one hundred eighty (180) days of the change in control event to
14 qualify for consideration. An establishment entering the Oklahoma
15 Quality Jobs Program Act as the result of a change of control event
16 shall be required to maintain a level of new direct jobs as agreed
17 to in its contract with the Department of Commerce and to pay new
18 direct jobs an average annualized wage which equals or exceeds one
19 hundred twenty-five percent (125%) of the average county wage as
20 that percentage is determined by the Oklahoma State Data Center
21 based upon the most recent U.S. Department of Commerce data for the
22 county in which the new jobs are located. For purposes of this
23 paragraph, healthcare premiums paid by the applicant for individuals
24 in new direct jobs shall not be included in the annualized wage.

1 Such establishment entering the Quality Jobs Program Act as the
2 result of a change of control event shall be required to retain the
3 contracted average annualized wage and maintain the contracted
4 maintenance level of new direct jobs numbers as certified by the
5 Oklahoma Tax Commission. If the required average annualized wage or
6 the required new direct jobs numbers do not equal or exceed such
7 contracted level during any quarter, the quarterly incentive
8 payments shall not be made and shall not be resumed until such time
9 as such requirements are met. An establishment described in this
10 paragraph shall be required to repay all incentive payments received
11 under the Quality Jobs Program Act if the establishment is
12 determined by the Oklahoma Tax Commission to no longer have business
13 operations in the state within three (3) years from the beginning of
14 the calendar quarter for which the first incentive payment claim is
15 filed.

16 3. "New direct job":

- 17 a. means full-time-equivalent employment in this state in
18 an establishment which has qualified to receive an
19 incentive payment pursuant to the provisions of
20 Section 3601 et seq. of this title which employment
21 did not exist in this state prior to the date of
22 approval by the Department of the application of the
23 establishment pursuant to the provisions of Section
24 3604 of this title and with respect to an

1 establishment qualifying for incentive payments
2 pursuant to division (12) of subparagraph a of
3 paragraph 1 of this subsection shall not include
4 compensation paid to an employee or independent
5 contractor for an athletic contest conducted in the
6 state if the compensation is paid by an entity that
7 does not have its principal place of business in the
8 state or that does not own real or personal property
9 having a market value of at least One Million Dollars
10 (\$1,000,000.00) located in the state, and the
11 employees or independent contractors of such entity
12 are compensated to compete against the employees or
13 independent contractors of an establishment that
14 qualifies for incentive payments pursuant to division
15 (12) of subparagraph a of paragraph 1 of this
16 subsection and which is organized under Oklahoma law
17 or that is lawfully registered to do business in the
18 state and which does have its principal place of
19 business located in the state and owns real or
20 personal property having a market value of at least
21 One Million Dollars (\$1,000,000.00) located in the
22 state; provided, that if an application of an
23 establishment is approved by the Department of
24 Commerce after a change in control event and the

1 Director of the Department of Commerce determines that
2 the jobs located at such establishment are likely to
3 leave the state, "new direct job" shall include
4 employment that existed in this state prior to the
5 date of application which is retained in this state by
6 the new establishment following a change in control
7 event, if such job otherwise qualifies as a new direct
8 job, and

9 b. shall include full-time-equivalent employment in this
10 state of employees who are employed by an employment
11 agency or similar entity other than the establishment
12 which has qualified to receive an incentive payment
13 and who are leased or otherwise provided under
14 contract to the qualified establishment, if such job
15 did not exist in this state prior to the date of
16 approval by the Department of the application of the
17 establishment or the job otherwise qualifies as a new
18 direct job following a change in control event. A job
19 shall be deemed to exist in this state prior to
20 approval of an application if the activities and
21 functions for which the particular job exists have
22 been ongoing at any time within six (6) months prior
23 to such approval. With respect to establishments
24 defined in division (10) of subparagraph a of

1 paragraph 1 of this subsection, new direct jobs shall
2 be limited to those jobs directly comprising the
3 corporate headquarters of or directly relating to
4 administrative, financial, engineering, surveying,
5 geological or geophysical services performed by the
6 establishment. Under no circumstances shall
7 employment relating to drilling or field services be
8 considered new direct jobs;

9 4. "Estimated direct state benefits" means the tax revenues
10 projected by the Department to accrue to the state as a result of
11 new direct jobs;

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

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

22 6. "Estimated net direct state benefits" means the estimated
23 direct state benefits less the estimated direct state costs;

1 7. "Net benefit rate" means the estimated net direct state
2 benefits computed as a percentage of gross payroll; provided:

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

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

10 (1) bids were solicited and accepted by the United
11 States Department of Defense from facilities
12 located outside this state,

13 (2) the term is or is renewable for not less than
14 twenty (20) years, and

15 (3) the average annual salary, excluding benefits
16 which are not subject to Oklahoma income taxes,
17 for new direct jobs created as a direct result of
18 the awarding of the contract is projected by the
19 Department of Commerce to equal or exceed Forty
20 Thousand Dollars (\$40,000.00) within three (3)
21 years of the date of the first incentive payment,

22 c. except as otherwise provided in subparagraph d of this
23 paragraph, in no event shall incentive payments,
24

1 cumulatively, exceed the estimated net direct state
2 benefits,

3 d. the net benefit rate shall be five percent (5%) for an
4 establishment locating:

5 (1) in an opportunity zone located in a high-
6 employment county, as such terms are defined in
7 subsection G of Section 3604 of this title, or

8 (2) in a county in which:

9 (a) the per capita personal income, as
10 determined by the Department, is eighty-five
11 percent (85%) or less of the statewide
12 average per capita personal income,

13 (b) the population has decreased over the
14 previous ten (10) years, as determined by
15 the State Data Center based on the most
16 recent U.S. Department of Commerce data, or

17 (c) the unemployment rate exceeds the lesser of
18 five percent (5%) or two percentage points
19 above the state average unemployment rate as
20 certified by the Oklahoma Employment
21 Security Commission,

22 e. the net benefit rate shall not exceed six percent (6%)
23 in connection with an establishment which:

1 (1) is, as of the date of application, receiving
2 incentive payments pursuant to the Oklahoma
3 Quality Jobs Program Act and has been receiving
4 such payments for at least one (1) year prior to
5 the date of application, and

6 (2) expands its operations in this state by creating
7 additional new direct jobs which pay average
8 annualized wages which equal or exceed one
9 hundred fifty percent (150%) of the average
10 annualized wages of new direct jobs on which
11 incentive payments were received during the
12 preceding calendar year, and

13 f. with respect to an establishment defined or classified
14 in the NAICS Manual under U.S. Industry No. 711211
15 (2007 version) or any establishment defined or
16 classified in the NAICS Manual as a U.S. Industry
17 Number which is not included within the definition of
18 "basic industry" as such term is defined in this
19 section on the effective date of this act, the net
20 benefit rate shall not exceed the highest rate of
21 income tax imposed upon the Oklahoma taxable income of
22 individuals pursuant to subparagraph (g) or
23 subparagraph (h), as applicable, of paragraph 1 and
24 paragraph 2 of subsection B of Section 2355 of this

1 title. Any change in such highest rate of individual
2 income tax imposed pursuant to the provisions of
3 Section 2355 of this title shall be applicable to the
4 computation of incentive payments to an establishment
5 as described by this subparagraph and shall be
6 effective for purposes of incentive payments based on
7 payroll paid by such establishment on or after January
8 1 of any applicable year for which the net benefit
9 rate is modified as required by this subparagraph.

10 Incentive payments made pursuant to the provisions of this
11 subparagraph shall be based upon payroll associated with such new
12 direct jobs. For purposes of this subparagraph, the amount of
13 health insurance premiums or other benefits paid by the
14 establishment shall not be included for purposes of computation of
15 the average annualized wage;

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

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

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

- 8 (1) within three (3) years of the first complete
9 calendar quarter following the start date, the
10 entity must have a minimum payroll of Two Million
11 Five Hundred Thousand Dollars (\$2,500,000.00) and
12 the subunit must also have or will have a minimum
13 payroll of Two Million Five Hundred Thousand
14 Dollars (\$2,500,000.00),
- 15 (2) the subunit is engaged in an activity or service
16 or produces a product which is demonstratively
17 independent and separate from the entity's other
18 activities, services or products and could be
19 conducted or produced in the absence of any other
20 activity, service or production of the entity,
- 21 (3) has an accounting system capable of tracking or
22 facilitating an audit of the subunit's payroll,
23 expenses, revenue and production. Limited
24 interunit overlap of administrative and

1 purchasing functions shall not disqualify a
2 subunit from consideration as an establishment by
3 the Department,

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

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

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

23 10. "NAICS Manual" means any manual, book or other publication
24 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 11. "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;

6 12. "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 13. "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 (9) of subparagraph a of paragraph 1 of
24

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 (10)
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 Executive
16 Director of the Oklahoma Center for the Advancement of Science and
17 Technology, or a designee from the Center appointed by the Executive
18 Director.

19 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3604, as
20 last amended by Section 2 of Enrolled Senate Bill No. 1819 of the
21 2nd Session of the 51st Oklahoma Legislature, is amended to read as
22 follows:

23 Section 3604. A. Except as otherwise provided in subsection I
24 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; provided, such an establishment defined or
5 classified in the NAICS Manual under U.S. Industry No. 711211 (2007
6 version) may receive quarterly incentive payments for a fifteen-year
7 period. The amount of such payments shall be equal to the net
8 benefit rate multiplied by the actual gross payroll of new direct
9 jobs for a calendar quarter as verified by the Oklahoma Employment
10 Security Commission.

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

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

- 22 1. Be engaged in a basic industry;
- 23 2. Have an annual gross payroll for new direct jobs projected
24 by the Department to equal or exceed Two Million Five Hundred

1 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
2 complete calendar quarter following the start date; and

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

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

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

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

1 buyer for ultimate use, or to the federal government,
2 unless the annual gross payroll equals or exceeds Two
3 Million Five Hundred Thousand Dollars (\$2,500,000.00)
4 in which case the requirements for purchase of output
5 provided by this subparagraph shall not apply, and

- 6 b. have a number of full-time-equivalent employees
7 working an average of ~~twenty-five (25)~~ thirty (30) or
8 more hours per week in new direct jobs equal to or in
9 excess of eighty percent (80%) of the total number of
10 new direct jobs; and

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

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

- 18 b. have a number of full-time-equivalent employees
19 working an average of twenty-five (25) or more hours
20 per week in new direct jobs equal to or in excess of
21 eighty percent (80%) of the total number of new direct
22 jobs.

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

- a. is a federal Superfund removal site,
- b. is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code,
- c. has been formally deferred to the state in lieu of listing on the National Priorities List, or
- d. has been determined by the Department of Environmental Quality to be contaminated by any substance regulated by a federal or state statute governing environmental conditions for real property pursuant to an order of the Department of Environmental Quality,

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

2. In order to qualify for the incentive payments pursuant to this subsection, the establishment shall conduct the activity resulting in at least fifty percent (50%) of its Oklahoma taxable income or adjusted gross income, as determined under Section 2358 of this title, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection with respect to environmental 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 June 4, 2003, in
24 order to qualify to receive incentive payments as authorized by the

1 Oklahoma Quality Jobs Program Act, in addition to other
2 qualifications specified herein, an establishment shall be required
3 to pay new direct jobs an average annualized wage which equals or
4 exceeds:

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

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

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

24

1 G. 1. As used in this subsection, "opportunity zone" means one
2 or more census tracts in which, according to the most recent federal
3 decennial census, at least thirty percent (30%) of the residents
4 have annual gross household incomes from all sources below the
5 poverty guidelines established by the U.S. Department of Health and
6 Human Services. An establishment which is otherwise qualified to
7 receive incentive payments and which locates its principal business
8 activity in an opportunity zone shall not be subject to the
9 requirements of subsection F of this section.

10 2. As used in this subsection:

11 a. "negative economic event" means:

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

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

23 b. "significant number of jobs" means Local Area

24 Unemployment Statistics (LAUS) data, as determined by

1 the Bureau of Labor Statistics, for a county which are
2 equal to or in excess of five percent (5%) of the
3 total amount of Local Area Unemployment Statistics
4 (LAUS) data for that county for the calendar year, or
5 most recent twelve-month period in which employment is
6 measured, preceding the event.

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

15 H. The Department shall determine if the applicant is qualified
16 to receive incentive payments.

17 I. If the applicant is determined to be qualified by the
18 Department and is not subject to the provisions of subparagraph d of
19 paragraph 6 7 of subsection A of Section 3603 of this title, the
20 Department shall conduct a cost/benefit analysis to determine the
21 estimated net direct state benefits and the net benefit rate
22 applicable for a ten-year period beginning with the first complete
23 calendar quarter following the start date and to estimate the amount
24 of gross payroll for a ten-year period beginning with the first

1 complete calendar quarter following the start date or for a fifteen-
2 year period for an establishment defined or classified in the NAICS
3 Manual under U.S. Industry No. 711211 (2007 version). In conducting
4 such cost/benefit analysis, the Department shall consider
5 quantitative factors, such as the anticipated level of new tax
6 revenues to the state along with the added cost to the state of
7 providing services, and such other criteria as deemed appropriate by
8 the Department. In no event shall incentive payments, cumulatively,
9 exceed the estimated net direct state benefits, except for
10 applicants subject to the provisions of subparagraph d of paragraph
11 ~~6~~ 7 of subsection A of Section 3603 of this title.

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

1 agreement shall be deemed to exist between the establishment and the
2 State of Oklahoma, requiring the continued incentive payment to be
3 made as long as the establishment retains its eligibility as defined
4 in and established pursuant to this section and Sections 3603 and
5 3606 of this title and within the limitations contained in the
6 Oklahoma Quality Jobs Program Act, which existed at the time of such
7 approval.

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

1 the amount of the approved claim in the same manner as warrants are
2 issued to qualifying establishments.

3 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3606, as
4 last amended by Section 3 of Enrolled Senate Bill No. 1819 of the
5 2nd Session of the 51st Oklahoma Legislature, is amended to read as
6 follows:

7 Section 3606. A. As soon as practicable after the end of a
8 ~~calendar quarter for which an establishment has qualified to receive~~
9 ~~an incentive payment~~ the first complete calendar quarter following
10 the start date, the establishment shall file a claim for the payment
11 with the Oklahoma Tax Commission and shall specify the actual number
12 and gross payroll of new direct jobs for the establishment for the
13 calendar quarter; ~~provided, in no event shall the first claim for~~
14 ~~incentive payments be filed later than three (3) years from the~~
15 ~~start date designated by the Oklahoma Department of Commerce.~~ The
16 Tax Commission shall verify the actual gross payroll for new direct
17 jobs for the establishment for such calendar quarter. If the Tax
18 Commission is not able to provide such verification utilizing all
19 available resources, the Tax Commission may request such additional
20 information from the establishment as may be necessary or may
21 request the establishment to revise its claim. An establishment may
22 file for an extension of the initial filing date with the Oklahoma
23 Department of Commerce. Any such extension shall be based solely
24 upon an extraordinary adverse business circumstance which prevented

1 the establishment from hiring the new direct jobs as projected. If
2 an establishment fails to file claims as required by this section,
3 it shall forfeit the right to receive any incentive payments after
4 three (3) years from the start date.

5 B. If the actual verified gross payroll for four (4)
6 consecutive calendar quarters does not equal or exceed the
7 applicable total required by Section 3604 of this title within three
8 (3) years of the start date, or does not equal or exceed the
9 applicable total required by Section 3604 of this title at any other
10 time during the ten-year period after the start date or during the
11 fifteen-year period after the start date for establishments defined
12 or classified in the NAICS Manual under U.S. Industry No. 711211
13 (2007 version), the incentive payments shall not be made and shall
14 not be resumed until such time as the actual verified gross payroll
15 equals or exceeds the amounts specified in Section 3604 of this
16 title.

17 C. If the average annualized wage required for an establishment
18 does not equal or exceed the amount specified in paragraph 1 or 2 of
19 subsection F of Section 3604 of this title during any calendar
20 quarter, the incentive payments shall not be made and shall not be
21 resumed until such time as such requirements are met.

22 D. In no event shall incentive payments, cumulatively, exceed
23 the estimated net direct state benefits, except for establishments
24

1 subject to the provisions of subparagraph d of paragraph ~~6~~ 7 of
2 subsection A of Section 3603 of this title.

3 E. An establishment that has qualified pursuant to Section 3604
4 of this title may receive payments only in accordance with the
5 provisions of the law under which it initially applied and was
6 approved. If an establishment that is receiving incentive payments
7 expands, it may apply for additional incentive payments based on the
8 gross payroll anticipated from the expansion only, pursuant to
9 Section 3604 of this title. Provided, an establishment which has
10 suffered an extraordinary adverse business circumstance, as
11 certified by the Incentive Approval Committee, may be allowed to
12 voluntarily withdraw from the Oklahoma Quality Jobs Program, repay
13 to the Tax Commission the total amount of incentive payments
14 received pursuant to the provisions of this section, plus interest
15 at the rate specified in Section 727.1 of Title 12 of the Oklahoma
16 Statutes, and reapply to the Department for a new incentive contract
17 if the establishment qualifies pursuant to the provisions of the
18 Oklahoma Quality Jobs Program Act. Any funds received by the Tax
19 Commission pursuant to the provisions of this subsection shall be
20 apportioned in the manner that income tax revenues are apportioned.

21 F. An establishment that is receiving incentive payments may
22 not apply for additional incentive payments for any new projects
23 until twelve (12) quarters after receipt of the first incentive
24 payment, or until the establishment's actual verified gross payroll

1 for new direct jobs equals or exceeds Two Million Five Hundred
2 Thousand Dollars (\$2,500,000.00) during any four consecutive-
3 calendar-quarter period, whichever comes first. After meeting the
4 requirements of this subsection, an establishment may apply for
5 additional incentive payments based upon the gross payroll
6 anticipated from an expansion only.

7 G. As soon as practicable after verification of the actual
8 gross payroll as required by this section and except as otherwise
9 provided by subsection L of Section 3604 of this title, the Tax
10 Commission shall issue a warrant to the establishment in the amount
11 of the net benefit rate multiplied by the actual gross payroll as
12 determined pursuant to subsection A of this section for the calendar
13 quarter.

14 SECTION 4. AMENDATORY 68 O.S. 2001, Section 3607, is
15 amended to read as follows:

16 Section 3607. Notwithstanding any other provision of law, if a
17 qualified establishment receives an incentive payment pursuant to
18 the provisions of Section 3601 et seq. of this title, neither the
19 qualified establishment nor its contractors or subcontractors shall
20 be eligible to receive the credits or exemptions provided for in the
21 following provisions of law in connection with the activity for
22 which the incentive payment was received:

- 23 1. Paragraphs ~~14~~ 16 and ~~15~~ 17 of Section 1357 of this title;
- 24 2. Paragraph 7 of Section 1359 of this title;

