ENGROSSED SENATE
BILL NO. 2153 By: Mazzei of the Senate

and

Peterson (Ron) of the House

[revenue and taxation - Oklahoma Quality Jobs Program Act - modifying definitions, requirements and procedures - effective date]

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 61, Chapter 1, O.S.L. 2007 (68 O.S. Supp. 2007, 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,

(2) those electric power generation, transmission and distribution activities defined or classified in

the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:

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

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

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

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

(3) those administrative and facilities support service activities defined or classified in the NAICS Manual under Industry Group Nos. 5611 and 5612, Industry Nos. 51821, 518112, 52232, 56142 and 54191 or U.S. Industry Nos. 524291 and 551114, and those other support activities for air transportation defined or classified in the NAICS Manual under Industry Group No. 488190,

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

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

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

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

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

(ii) a facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services, or

(b) those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if an establishment

classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government,

(8) flight training services activities defined or classified in the NAICS Manual under U.S. Industry Group No. 611512, which for purposes of this act shall include new direct jobs for which gross payroll existed on or after January 1, 2003, as identified in the NAICS Manual,

(9) the following, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or

buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

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

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

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

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

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

(f) those services to dwellings and other buildings, as defined or classified in the NAICS Manual under Industry Group No. 5617, excluding U.S. Industry No. 561730,

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

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

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

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

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

(l) those professional, scientific and technical service activities defined or classified in the NAICS Manual under Industry Group Nos. 5412, 5414, 5415, 5416 and 5417, Industry Nos. 54131, 54133, 54136, 54137 and 54182, and U.S. Industry No. 541990, if not otherwise listed in this paragraph,

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

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

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

(p) those activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S. Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and

524292 in the NAICS Manual other than processing of insurance claims shall not be included for purposes of this subdivision, and

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

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

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

b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a

basic industry unless it offers, or will offer within one hundred eighty (180) days of employment, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

(1) not more than fifty percent (50%) of the premium shall be paid by the employee,

(2) coverage for basic hospital care,

(3) coverage for physician care,

(4) coverage for mental health care,

(5) coverage for substance abuse treatment,

(6) coverage for prescription drugs, and

(7) coverage for prenatal care;

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

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

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

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

contracted average annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new direct jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. An establishment described in this paragraph shall be required to repay all incentive payments received under the Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

3. "New direct job":

a. means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title; provided, that if an application of an establishment is approved by the Department of Commerce after a change in control event and the

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

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

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

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

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

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

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

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

d. the costs of other state services;

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

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

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

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

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

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

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

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

cumulatively, exceed the estimated net direct state benefits,

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

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

(2) in a county in which:

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

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

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

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

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

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

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

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

9. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination

of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of Section 3601 et seq. of this title, by the Department subject to the following conditions:

(1) within three (3) years of the first complete calendar quarter following the start date, the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars ($2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars ($2,500,000.00),

(2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,

(3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Department,

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

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

b. The Department may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining the period of time within which such gain must be

demonstrated and a method for determining net gain in total employment;

10. "NAICS Manual" means any manual, book or other publication containing the North American Industry Classification System, United States, 1997, promulgated by the Office of Management and Budget of the United States of America, or the latest revised edition;

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

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

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

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

1. Upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subdivision (b) of division (7) or in subdivisions (a) through (p) of division (9) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section;

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

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

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

SECTION 2. AMENDATORY 68 O.S. 2001, Section 3604, as last amended by Section 1, Chapter 357, O.S.L. 2007 (68 O.S. Supp. 2007, Section 3604), is amended to read as follows:

Section 3604. A. Except as otherwise provided in subsection I of this section, an establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

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

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

1. Be engaged in a basic industry;

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

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

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

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

a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the first complete calendar quarter following the start date and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-

state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and

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

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

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

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

E. 1. An establishment which locates its principal business 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 all other requirements of the Oklahoma Quality Jobs Program Act other than the exemptions provided by this subsection.

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

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

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

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

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

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

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

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

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

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

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

2. As used in this subsection:

a. "negative economic event" means:

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

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

b. "significant number of jobs" means Local Area Unemployment Statistics (LAUS) data, as determined by

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

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

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

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

complete calendar quarter following the start date. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for applicants subject to the provisions of subparagraph d of paragraph ~~6~~ 7 of subsection A of Section 3603 of this title.

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

made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

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

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3606, as last amended by Section 2, Chapter 357, O.S.L. 2007 (68 O.S. Supp. 2007, Section 3606), is amended to read as follows:

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

it shall forfeit the right to receive any incentive payments after three (3) years from the start date.

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

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

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

E. An establishment that has qualified pursuant to Section 3604 of this title may receive payments only in accordance with the provisions of the law under which it initially applied and was approved. If an establishment that is receiving incentive payments

expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of this title. Provided, an establishment which has suffered an extraordinary adverse business circumstance, as certified by the Incentive Approval Committee, may be allowed to voluntarily withdraw from the Oklahoma Quality Jobs Program, repay to the Tax Commission the total amount of incentive payments received pursuant to the provisions of this section, plus interest at the rate specified in Section 727.1 of Title 12 of the Oklahoma Statutes, and reapply to the Department for a new incentive contract if the establishment qualifies pursuant to the provisions of the Oklahoma Quality Jobs Program Act. Any funds received by the Tax Commission pursuant to the provisions of this subsection shall be apportioned in the manner that income tax revenues are apportioned.

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

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

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

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

1. Paragraphs 14 and 15 of Section 1357 of this title;

2. Paragraph 7 of Section 1359 of this title;

3. Section 2357.4 of this title;

4. Section 2357.7 of this title;

5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

6. Section 2357.22 of this title;

7. Section 2357.31 of this title;

8. Section 54003 of this title;

9. Section 54006 of this title;

10. Section 625.1 of Title 36 of the Oklahoma Statutes;

11. Subsections C and D of Section 2357.59 of this title; ~~or~~

12. Section 2357.13 of this title; or

13. Section 4201 of this title.

SECTION 5. This act shall become effective November 1, 2008.

Passed the Senate the 11th day of March, 2008.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2008.

_____
Presiding Officer of the House of Representatives