

THE HOUSE OF REPRESENTATIVES
Wednesday, April 9, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 2153

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2153 - By:
MAZZEI of the Senate and PETERSON (RON) of the House.

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 3603, as last amended by Section 61, Chapter 1, O.S.L. 2007, 3604, as last amended by Section 1, Chapter 357, O.S.L. 2007, 3606, as last amended by Section 2, Chapter 357, O.S.L. 2007 and 3607 (68 O.S. Supp. 2007, Sections 3603, 3604 and 3606), which relate to the Oklahoma Quality Jobs Program Act; modifying definitions; modifying requirements relating to 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 certain rights are forfeited under specified circumstances; limiting eligibility for certain credit or exemption; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by
2 Section 61, Chapter 1, O.S.L. 2007 (68 O.S. Supp. 2007, Section 3603), is amended to
3 read as follows:
- 4 Section 3603. A. As used in Section 3601 et seq. of this title:
- 5 1. a. “Basic industry” means:

- 1 (1) those manufacturing activities defined or classified in the
2 NAICS Manual under Industry Sector Nos. 31, 32 and 33,
3 Industry Group No. 5111 or Industry No. 11331,
4 (2) those electric power generation, transmission and distribution
5 activities defined or classified in the NAICS Manual under U.S.
6 Industry Nos. 221111 through 221122, if:
- 7 (a) an establishment engaged therein qualifies as an exempt
8 wholesale generator as defined by 15 U.S.C., Section 79z-
9 5a,
10 (b) the exempt wholesale generator facility consumes from
11 sources located within the state at least ninety percent
12 (90%) of the total energy used to produce the electrical
13 output which qualifies for the specialized treatment
14 provided by the Energy Policy Act of 1992, P.L. 102-486,
15 106 Stat. 2776, as amended, and federal regulations
16 adopted pursuant thereto,
17 (c) the exempt wholesale generator facility sells to
18 purchasers located outside the state for consumption in
19 activities located outside the state at least ninety percent
20 (90%) of the total electrical energy output which qualifies
21 for the specialized treatment provided by the Energy
22 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as

1 amended, and federal regulations adopted pursuant
2 thereto, and

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

4 (3) those administrative and facilities support service activities
5 defined or classified in the NAICS Manual under Industry
6 Group Nos. 5611 and 5612, Industry Nos. 51821, 518112, 52232,
7 56142 and 54191 or U.S. Industry Nos. 524291 and 551114, and
8 those other support activities for air transportation defined or
9 classified in the NAICS Manual under Industry Group No.
10 488190,

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

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

18 (6) those adjustment and collection service activities defined or
19 classified in the NAICS Manual under U.S. Industry No.
20 561440, if seventy-five percent (75%) of the loans to be serviced
21 were made by out-of-state debtors,

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(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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

10 (9) the following, if an establishment classified therein has or will
11 have within one (1) year sales of at least seventy-five percent
12 (75%) of its total sales, as determined by the Incentive Approval
13 Committee pursuant to the provisions of subsection B of this
14 section, to out-of-state customers or buyers, to in-state
15 customers or buyers if the product or service is resold by the
16 purchaser to an out-of-state customer or buyer for ultimate use,
17 or to the federal government:

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

- 1 (b) those passenger transportation activities defined or
2 classified in the NAICS Manual under Industry Nos.
3 561510, 561520 and 561599,
- 4 (c) those freight or cargo transportation activities defined or
5 classified in the NAICS Manual under Industry No.
6 541614,
- 7 (d) those insurance activities defined or classified in the
8 NAICS Manual under Industry Group No. 5241,
- 9 (e) those mailing, reproduction, commercial art and
10 photography and stenographic service activities defined or
11 classified in the NAICS Manual under U.S. Industry Nos.
12 541430, 541860, 541922, 561439 and 561492,
- 13 (f) those services to dwellings and other buildings, as defined
14 or classified in the NAICS Manual under Industry Group
15 No. 5617, excluding U.S. Industry No. 561730,
- 16 (g) those equipment rental and leasing activities defined or
17 classified in the NAICS Manual under Industry Group
18 Nos. 5323 and 5324,
- 19 (h) those employment services defined or classified in the
20 NAICS Manual under Industry Group No. 5613,
- 21 (i) those information technology and other computer-related
22 service activities defined or classified in the NAICS

- 1 Manual under Industry Group Nos. 5112, 5182, 5191 and
2 5415,
- 3 (j) those business support service activities defined or
4 classified in the NAICS Manual under U.S. Industry Nos.
5 561410 through 561439, Industry Group No. 5616 and
6 Industry No. 51911,
- 7 (k) those medical and diagnostic laboratory activities defined
8 or classified in the NAICS Manual under Industry Group
9 No. 6215,
- 10 (l) those professional, scientific and technical service
11 activities defined or classified in the NAICS Manual
12 under Industry Group Nos. 5412, 5414, 5415, 5416 and
13 5417, Industry Nos. 54131, 54133, 54136, 54137 and
14 54182, and U.S. Industry No. 541990, if not otherwise
15 listed in this paragraph,
- 16 (m) those communication service activities defined or
17 classified in the NAICS Manual under Industry Nos.
18 51741 and 51791,
- 19 (n) those refuse systems activities defined or classified in the
20 NAICS Manual under Industry Group No. 5622, provided
21 that the establishment is primarily engaged in the

- 1 capture and distribution of methane gas produced within
2 a landfill,
- 3 (o) general wholesale distribution of groceries, defined or
4 classified in the NAICS Manual under Industry Group
5 Nos. 4244 and 4245,
- 6 (p) those activities relating to processing of insurance claims,
7 defined or classified in the NAICS Manual under U.S.
8 Industry Nos. 524210 and 524292; provided, activities
9 described in U.S. Industry Nos. 524210 and 524292 in the
10 NAICS Manual other than processing of insurance claims
11 shall not be included for purposes of this subdivision, and
- 12 (q) those agricultural activities classified in the NAICS
13 Manual under U.S. Industry Nos. 112120 and 112310;
- 14 (10) those activities related to extraction of crude petroleum and
15 natural gas defined or classified in the NAICS Manual under
16 Industry Group No. 2111, subject to the limitations provided in
17 paragraph 2 of this subsection and paragraph 3 of subsection B
18 of this section, or
- 19 (11) those activities performed by the federal civilian workforce at a
20 facility of the Federal Aviation Administration located in this
21 state if the Director of the Department of Commerce determines
22 or is notified that the federal government is soliciting proposals

1 or otherwise inviting states to compete for additional federal
2 civilian employment or expansion of federal civilian employment
3 at such facilities.

4 b. An establishment described in subparagraph a of this paragraph shall
5 not be considered to be engaged in a basic industry unless it offers, or
6 will offer within one hundred eighty (180) days of employment, a basic
7 health benefits plan to the individuals it employs in new direct jobs in
8 this state which is determined by the Oklahoma Department of
9 Commerce to consist of the following elements or elements
10 substantially equivalent thereto:

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

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

- 1 a. beneficial ownership of more than fifty percent (50%) in value and
2 more than fifty percent (50%) in voting power of the outstanding equity
3 securities of the transferred establishment, or
4 b. more than fifty percent (50%) in value of the assets of an
5 establishment.

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

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

12 3. "New direct job":

13 a. means full-time-equivalent employment in this state in an
14 establishment which has qualified to receive an incentive payment
15 pursuant to the provisions of Section 3601 et seq. of this title which
16 employment did not exist in this state prior to the date of approval by
17 the Department of the application of the establishment pursuant to the
18 provisions of Section 3604 of this title; provided, that if an application
19 of an establishment is approved by the Department of Commerce after
20 a change in control event and the Director of the Department of
21 Commerce determines that the jobs located at such establishment are
22 likely to leave the state, "new direct job" shall include employment that

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

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

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

- 6 a. the costs of education of new state resident children,
- 7 b. the costs of public health, public safety and transportation services to
8 be provided to new state residents,
- 9 c. the costs of other state services to be provided to new state residents,
10 and
- 11 d. the costs of other state services;

12 6. “Estimated net direct state benefits” means the estimated direct state benefits
13 less the estimated direct state costs;

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

- 16 a. except as otherwise provided in this paragraph, the net benefit rate
17 may be variable and shall not exceed five percent (5%),
- 18 b. the net benefit rate shall not exceed six percent (6%) in connection
19 with an establishment which is owned and operated by an entity which
20 has been awarded a United States Department of Defense contract for
21 which:

- 1 (1) bids were solicited and accepted by the United States
2 Department of Defense from facilities located outside this state,
3 (2) the term is or is renewable for not less than twenty (20) years,
4 and
5 (3) the average annual salary, excluding benefits which are not
6 subject to Oklahoma income taxes, for new direct jobs created as
7 a direct result of the awarding of the contract is projected by the
8 Department of Commerce to equal or exceed Forty Thousand
9 Dollars (\$40,000.00) within three (3) years of the date of the first
10 incentive payment,
- 11 c. except as otherwise provided in subparagraph d of this paragraph, in
12 no event shall incentive payments, cumulatively, exceed the estimated
13 net direct state benefits,
- 14 d. the net benefit rate shall be five percent (5%) for an establishment
15 locating:
- 16 (1) in an opportunity zone located in a high-employment county, as
17 such terms are defined in subsection G of Section 3604 of this
18 title, or
19 (2) in a county in which:
20 (a) the per capita personal income, as determined by the
21 Department, is eighty-five percent (85%) or less of the
22 statewide average per capita personal income,

- 1 (b) the population has decreased over the previous ten (10)
2 years, as determined by the State Data Center based on
3 the most recent U.S. Department of Commerce data, or
4 (c) the unemployment rate exceeds the lesser of five percent
5 (5%) or two percentage points above the state average
6 unemployment rate as certified by the Oklahoma
7 Employment Security Commission, and
8 e. the net benefit rate shall not exceed six percent (6%) in connection
9 with an establishment which:
10 (1) is, as of the date of application, receiving incentive payments
11 pursuant to the Oklahoma Quality Jobs Program Act and has
12 been receiving such payments for at least one (1) year prior to
13 the date of application, and
14 (2) expands its operations in this state by creating additional new
15 direct jobs which pay average annualized wages which equal or
16 exceed one hundred fifty percent (150%) of the average
17 annualized wages of new direct jobs on which incentive
18 payments were received during the preceding calendar year.

19 Incentive payments made pursuant to the provisions of this subparagraph shall be
20 based upon payroll associated with such new direct jobs. For purposes of this
21 subparagraph, the amount of health insurance premiums or other benefits paid by the

1 establishment shall not be included for purposes of computation of the average
2 annualized wage;

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

5 9. a. "Establishment" means any business or governmental entity, no
6 matter what legal form, including, but not limited to, a sole
7 proprietorship; partnership; limited liability company; corporation or
8 combination of corporations which have a central parent corporation
9 which makes corporate management decisions such as those involving
10 consolidation, acquisition, merger or expansion; federal agency;
11 political subdivision of the State of Oklahoma; or trust authority;
12 provided, distinct, identifiable subunits of such entities may be
13 determined to be an establishment, for all purposes of Section 3601 et
14 seq. of this title, by the Department subject to the following conditions:

- 15 (1) within three (3) years of the first complete calendar quarter
16 following the start date, the entity must have a minimum
17 payroll of Two Million Five Hundred Thousand Dollars
18 (\$2,500,000.00) and the subunit must also have or will have a
19 minimum payroll of Two Million Five Hundred Thousand
20 Dollars (\$2,500,000.00),
21 (2) the subunit is engaged in an activity or service or produces a
22 product which is demonstratively independent and separate

1 from the entity's other activities, services or products and could
2 be conducted or produced in the absence of any other activity,
3 service or production of the entity,

4 (3) has an accounting system capable of tracking or facilitating an
5 audit of the subunit's payroll, expenses, revenue and production.

6 Limited interunit overlap of administrative and purchasing
7 functions shall not disqualify a subunit from consideration as an
8 establishment by the Department,

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

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

17 b. The Department may promulgate rules to further limit the
18 circumstances under which a subunit may be considered an
19 establishment. The Department shall promulgate rules to determine
20 whether a subunit of an entity achieves a net gain in total
21 employment. The Department shall establish criteria for determining

1 the period of time within which such gain must be demonstrated and a
2 method for determining net gain in total employment;

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

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

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

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

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

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

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

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

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

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

20 Section 3604. A. Except as otherwise provided in subsection I of this section, an
21 establishment which meets the qualifications specified in the Oklahoma Quality Jobs
22 Program Act may receive quarterly incentive payments for a ten-year period from the

1 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs
2 Program Act in an amount which shall be equal to the net benefit rate multiplied by the
3 actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma
4 Employment Security Commission.

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

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

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

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

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~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

- 1 a. have an annual gross payroll for new direct jobs projected by the
2 Department to equal or exceed One Million Five Hundred Thousand
3 Dollars (\$1,500,000.00) within three (3) years of the first complete
4 calendar quarter following the start date, and
5 b. have a number of full-time-equivalent employees working an average
6 of twenty-five (25) or more hours per week in new direct jobs equal to
7 or in excess of eighty percent (80%) of the total number of new direct
8 jobs.
- 9 E. 1. An establishment which locates its principal business activity within a site
10 consisting of at least ten (10) acres which:
- 11 a. is a federal Superfund removal site,
12 b. is listed on the National Priorities List established under Section 9605
13 of Title 42 of the United States Code,
14 c. has been formally deferred to the state in lieu of listing on the National
15 Priorities List, or
16 d. has been determined by the Department of Environmental Quality to
17 be contaminated by any substance regulated by a federal or state
18 statute governing environmental conditions for real property pursuant
19 to an order of the Department of Environmental Quality,
20 shall qualify for incentive payments irrespective of its actual gross payroll or the number
21 of full-time-equivalent employees engaged in new direct jobs.

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

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

- 12 a. the site designated by the entity does meet one or more of the
- 13 requirements listed in paragraph 1 of this subsection, and
- 14 b. the site is being or has been remediated to a level which is consistent
- 15 with the intended use of the property.

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

19 4. If authorized by the Department of Environmental Quality pursuant to
20 paragraph 3 of this subsection, the entity may utilize a remediated portion of the
21 property for its intended purpose prior to remediation of the remainder of the site, and

1 shall qualify for incentive payments based on employment associated with the portion of
2 the site.

3 F. Except as otherwise provided by subsection G of this section, for applications
4 submitted on and after the effective date of this act, in order to qualify to receive
5 incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in
6 addition to other qualifications specified herein, an establishment shall be required to
7 pay new direct jobs an average annualized wage which equals or exceeds:

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

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

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

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BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

8 2. As used in this subsection:

9 a. “negative economic event” means:

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

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

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

1 (LAUS) data for that county for the calendar year, or most recent
2 twelve-month period in which employment is measured, preceding the
3 event.

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

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

12 I. If the applicant is determined to be qualified by the Department and is not
13 subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section
14 3603 of this title, the Department shall conduct a cost/benefit analysis to determine the
15 estimated net direct state benefits and the net benefit rate applicable for a ten-year
16 period beginning with the first complete calendar quarter following the start date and to
17 estimate the amount of gross payroll for a ten-year period beginning with the first
18 complete calendar quarter following the start date. In conducting such cost/benefit
19 analysis, the Department shall consider quantitative factors, such as the anticipated
20 level of new tax revenues to the state along with the added cost to the state of providing
21 services, and such other criteria as deemed appropriate by the Department. In no event
22 shall incentive payments, cumulatively, exceed the estimated net direct state benefits,

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

3 J. Upon approval of such an application, the Department shall notify the Tax
4 Commission and shall provide it with a copy of the ~~application~~ contract and the results of
5 the cost/benefit analysis. The Tax Commission may require the qualified establishment
6 to submit such additional information as may be necessary to administer the provisions
7 of the Oklahoma Quality Jobs Program Act. The approved establishment shall ~~report to~~
8 file quarterly claims with the Tax Commission ~~periodically~~ and shall continue to file such
9 quarterly claims during the ten-year incentive period to show its continued eligibility for
10 incentive payments, as provided in Section 3606 of this title, or until it is no longer
11 qualified to receive incentive payments. The establishment may be audited by the Tax
12 Commission to verify such eligibility. Once the establishment is approved, an agreement
13 shall be deemed to exist between the establishment and the State of Oklahoma, requiring
14 the continued incentive payment to be made as long as the establishment retains its
15 eligibility as defined in and established pursuant to this section and Sections 3603 and
16 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs
17 Program Act, which existed at the time of such approval.

18 K. A municipality with a population of less than one hundred thousand (100,000)
19 persons in which an establishment eligible to receive quarterly incentive payments
20 pursuant to the provisions of this section is located may file a claim with the Tax
21 Commission for up to twenty-five percent (25%) of the amount of such payment. The
22 amount of such claim shall not exceed amounts paid by the municipality for direct costs

1 of municipal infrastructure improvements to provide water and sewer service to the
2 establishment. Such claim shall not be approved by the Tax Commission unless the
3 municipality and the establishment have entered into a written agreement for such
4 claims to be filed by the municipality prior to submission of the application of the
5 establishment pursuant to the provisions of this section. If such claim is approved, the
6 amount of the payment to the establishment made pursuant to the provisions of Section
7 3606 of this title shall be reduced by the amount of the approved claim by the
8 municipality and the Tax Commission shall issue a warrant to the municipality in the
9 amount of the approved claim in the same manner as warrants are issued to qualifying
10 establishments.

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

14 Section 3606. A. As soon as practicable after the end of a calendar quarter for
15 ~~which an establishment has qualified to receive an incentive payment~~ the first complete
16 calendar quarter following the start date, the establishment shall file a claim for the
17 payment with the Oklahoma Tax Commission and shall specify the actual number and
18 gross payroll of new direct jobs for the establishment for the calendar quarter; ~~provided,~~
19 ~~in no event shall the first claim for incentive payments be filed later than three (3) years~~
20 ~~from the start date designated by the Oklahoma Department of Commerce.~~ The Tax
21 Commission shall verify the actual gross payroll for new direct jobs for the establishment
22 for such calendar quarter. If the Tax Commission is not able to provide such verification

1 utilizing all available resources, the Tax Commission may request such additional
2 information from the establishment as may be necessary or may request the
3 establishment to revise its claim. An establishment may file for an extension of the
4 initial filing date with the Oklahoma Department of Commerce. Any such extension
5 shall be based solely upon an extraordinary adverse business circumstance which
6 prevented the establishment from hiring the new direct jobs as projected. If an
7 establishment fails to file claims as required by this section, it shall forfeit the right to
8 receive any incentive payments after three (3) years from the start date.

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

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

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

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

16 F. An establishment that is receiving incentive payments may not apply for
17 additional incentive payments for any new projects until twelve (12) quarters after
18 receipt of the first incentive payment, or until the establishment's actual verified gross
19 payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars
20 (\$2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes
21 first. After meeting the requirements of this subsection, an establishment may apply for

1 additional incentive payments based upon the gross payroll anticipated from an
2 expansion only.

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

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

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

- 16 1. Paragraphs ~~14~~ 16 and ~~15~~ 17 of Section 1357 of this title;
- 17 2. Paragraph 7 of Section 1359 of this title;
- 18 3. Section 2357.4 of this title;
- 19 4. Section 2357.7 of this title;
- 20 5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
- 21 6. Section 2357.22 of this title;
- 22 7. Section 2357.31 of this title;

- 1 8. Section 54003 of this title;
- 2 9. Section 54006 of this title;
- 3 10. Section 625.1 of Title 36 of the Oklahoma Statutes;
- 4 11. Subsections C and D of Section 2357.59 of this title; ~~or~~
- 5 12. Section 2357.13 of this title; or
- 6 13. Section 4201 of this title.

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

8 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
9 FINANCIAL SERVICES, dated 04-08-08 - DO PASS, As Amended.