

THE HOUSE OF REPRESENTATIVES
Thursday, April 10, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 1819

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1819 - By:
COFFEE AND MORGAN of the Senate and BENGE AND DERBY 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 and 3606, as last amended by Section 2, Chapter 357, O.S.L. 2007 (68 O.S. Supp. 2007, Sections 3603, 3604 and 3606), which relate to the Oklahoma Quality Jobs Program Act; modifying definitions; authorizing incentive payment for certain establishment; modifying provisions related to net benefit rate; modifying provisions related to duration of incentive payments; and declaring an emergency.

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:

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

- 1 (2) those electric power generation, transmission and distribution
2 activities defined or classified in the NAICS Manual under U.S.
3 Industry Nos. 221111 through 221122, if:
- 4 (a) an establishment engaged therein qualifies as an exempt
5 wholesale generator as defined by 15 U.S.C., Section 79z-
6 5a,
- 7 (b) the exempt wholesale generator facility consumes from
8 sources located within the state at least ninety percent
9 (90%) of the total energy used to produce the electrical
10 output which qualifies for the specialized treatment
11 provided by the Energy Policy Act of 1992, P.L. 102-486,
12 106 Stat. 2776, as amended, and federal regulations
13 adopted pursuant thereto,
- 14 (c) the exempt wholesale generator facility sells to
15 purchasers located outside the state for consumption in
16 activities located outside the state at least ninety percent
17 (90%) of the total electrical energy output which qualifies
18 for the specialized treatment provided by the Energy
19 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
20 amended, and federal regulations adopted pursuant
21 thereto, and
- 22 (d) the facility is constructed on or after July 1, 1996,

- 1 (3) those administrative and facilities support service activities
2 defined or classified in the NAICS Manual under Industry
3 Group Nos. 5611 and 5612, Industry Nos. 51821, 518112, 52232,
4 56142 and 54191 or U.S. Industry Nos. 524291 and 551114,
5 (4) those professional, scientific and technical service activities
6 defined or classified in the NAICS Manual under U.S. Industry
7 Nos. 541710 and 541380,
8 (5) distribution centers for retail or wholesale businesses defined or
9 classified in the NAICS Manual under Sector No. 42, if forty
10 percent (40%) or more of the inventory processed through such
11 warehouse is shipped out-of-state,
12 (6) those adjustment and collection service activities defined or
13 classified in the NAICS Manual under U.S. Industry No.
14 561440, if seventy-five percent (75%) of the loans to be serviced
15 were made by out-of-state debtors,
16 (7) (a) those air transportation activities defined or classified in
17 the NAICS Manual under Industry Group No. 4811, if the
18 following facilities are located in this state:
19 (i) the corporate headquarters of an establishment
20 classified therein, and
21 (ii) a facility or facilities at which reservations for
22 transportation provided by such an establishment

1 are processed, whether such services are performed
2 by employees of the establishment, by employees of
3 a subsidiary of or other entity affiliated with the
4 establishment or by employees of an entity with
5 whom the establishment has contracted for the
6 performance of such services; provided, this
7 provision shall not disqualify an establishment
8 which uses an out-of-state entity or employees for
9 some reservations services, or

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

20 (8) flight training services activities defined or classified in the
21 NAICS Manual under U.S. Industry Group No. 611512, which
22 for purposes of ~~this act~~ Section 3601 et seq. of this title shall

1 include new direct jobs for which gross payroll existed on or
2 after January 1, 2003, as identified in the NAICS Manual,
3 (9) the following, if an establishment classified therein has or will
4 have within one (1) year sales of at least seventy-five percent
5 (75%) of its total sales, as determined by the Incentive Approval
6 Committee pursuant to the provisions of subsection B of this
7 section, to out-of-state customers or buyers, to in-state
8 customers or buyers if the product or service is resold by the
9 purchaser to an out-of-state customer or buyer for ultimate use,
10 or to the federal government:
11 (a) those transportation and warehousing activities defined
12 or classified in the NAICS Manual under Industry
13 Subsector No. 493, if not otherwise listed in this
14 paragraph, Industry Subsector No. 484 and Industry
15 Group Nos. 4884 through 4889,
16 (b) those passenger transportation activities defined or
17 classified in the NAICS Manual under Industry Nos.
18 561510, 561520 and 561599,
19 (c) those freight or cargo transportation activities defined or
20 classified in the NAICS Manual under Industry No.
21 541614,

- 1 (d) those insurance activities defined or classified in the
2 NAICS Manual under Industry Group No. 5241,
- 3 (e) those mailing, reproduction, commercial art and
4 photography and stenographic service activities defined or
5 classified in the NAICS Manual under U.S. Industry Nos.
6 541430, 541860, 541922, 561439 and 561492,
- 7 (f) those services to dwellings and other buildings, as defined
8 or classified in the NAICS Manual under Industry Group
9 No. 5617, excluding U.S. Industry No. 561730,
- 10 (g) those equipment rental and leasing activities defined or
11 classified in the NAICS Manual under Industry Group
12 Nos. 5323 and 5324,
- 13 (h) those employment services defined or classified in the
14 NAICS Manual under Industry Group No. 5613,
- 15 (i) those information technology and other computer-related
16 service activities defined or classified in the NAICS
17 Manual under Industry Group Nos. 5112, 5182, 5191 and
18 5415,
- 19 (j) those business support service activities defined or
20 classified in the NAICS Manual under U.S. Industry Nos.
21 561410 through 561439, Industry Group No. 5616 and
22 Industry No. 51911,

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

1 Industry Nos. 524210 and 524292; provided, activities
2 described in U.S. Industry Nos. 524210 and 524292 in the
3 NAICS Manual other than processing of insurance claims
4 shall not be included for purposes of this subdivision, and

5 (q) those agricultural activities classified in the NAICS
6 Manual under U.S. Industry Nos. 112120 and 112310;
7 (10) those activities related to extraction of crude petroleum and
8 natural gas defined or classified in the NAICS Manual under
9 Industry Group No. 2111, subject to the limitations provided in
10 paragraph 2 of this subsection and paragraph 3 of subsection B
11 of this section, ~~or~~

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

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

21 b. An establishment described in subparagraph a of this paragraph shall
22 not be considered to be engaged in a basic industry unless it offers, or

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

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

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

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

- 16 a. beneficial ownership of more than fifty percent (50%) in value and
17 more than fifty percent (50%) in voting power of the outstanding equity
18 securities of the transferred establishment, or
- 19 b. more than fifty percent (50%) in value of the assets of an
20 establishment.

21 A transferor shall be treated as related to a transferee if more than fifty percent
22 (50%) of the voting interests of the transferor and transferee are owned, directly or

1 indirectly, by the other or are owned, directly or indirectly, by the same person or
2 persons, unless such transferred establishment has an outstanding class of equity
3 securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934,
4 as amended, in which event the transferor and transferee will be treated as unrelated;
5 provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a
6 result of a change of control event is required to apply within one hundred eighty (180)
7 days of the change in control event to qualify for consideration. An establishment
8 entering the Oklahoma Quality Jobs Program Act as the result of a change of control
9 event shall be required to maintain a level of new direct jobs as agreed to in its contract
10 with the Department of Commerce and to pay new direct jobs an average annualized
11 wage which equals or exceeds one hundred twenty-five percent (125%) of the average
12 county wage as that percentage is determined by the Oklahoma State Data Center based
13 upon the most recent U.S. Department of Commerce data for the county in which the
14 new jobs are located. For purposes of this paragraph, healthcare premiums paid by the
15 applicant for individuals in new direct jobs shall not be included in the annualized wage.
16 Such establishment entering the Quality Jobs Program Act as the result of a change of
17 control event shall be required to retain the contracted average annualized wage and
18 maintain the contracted maintenance level of new direct jobs numbers as certified by the
19 Oklahoma Tax Commission. If the required average annualized wage or the required
20 new direct jobs numbers do not equal or exceed such contracted level during any quarter,
21 the quarterly incentive payments shall not be made and shall not be resumed until such
22 time as such requirements are met. An establishment described in this paragraph shall

1 be required to repay all incentive payments received under the Quality Jobs Program Act
2 if the establishment is determined by the Oklahoma Tax Commission to no longer have
3 business operations in the state within three (3) years from the beginning of the calendar
4 quarter for which the first incentive payment claim is filed.

5 3. "New direct job":

- 6 a. means full-time-equivalent employment in this state in an
7 establishment which has qualified to receive an incentive payment
8 pursuant to the provisions of Section 3601 et seq. of this title which
9 employment did not exist in this state prior to the date of approval by
10 the Department of the application of the establishment pursuant to the
11 provisions of Section 3604 of this title; provided, that if an application
12 of an establishment is approved by the Department of Commerce after
13 a change in control event and the Director of the Department of
14 Commerce determines that the jobs located at such establishment are
15 likely to leave the state, "new direct job" shall include employment that
16 existed in this state prior to the date of application which is retained in
17 this state by the new establishment following a change in control
18 event, if such job otherwise qualifies as a new direct job, and
19 b. shall include full-time-equivalent employment in this state of
20 employees who are employed by an employment agency or similar
21 entity other than the establishment which has qualified to receive an
22 incentive payment and who are leased or otherwise provided under

1 contract to the qualified establishment, if such job did not exist in this
2 state prior to the date of approval by the Department of the application
3 of the establishment or the job otherwise qualifies as a new direct job
4 following a change in control event. A job shall be deemed to exist in
5 this state prior to approval of an application if the activities and
6 functions for which the particular job exists have been ongoing at any
7 time within six (6) months prior to such approval. With respect to
8 establishments defined in division (10) of subparagraph a of paragraph
9 1 of this subsection, new direct jobs shall be limited to those jobs
10 directly comprising the corporate headquarters of or directly relating
11 to administrative, financial, engineering, surveying, geological or
12 geophysical services performed by the establishment. Under no
13 circumstances shall employment relating to drilling or field services be
14 considered new direct jobs;

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

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

- 20 a. the costs of education of new state resident children,
21 b. the costs of public health, public safety and transportation services to
22 be provided to new state residents,

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

3 d. the costs of other state services;

4 6. “Estimated net direct state benefits” means the estimated direct state benefits
5 less the estimated direct state costs;

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

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

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

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

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

18 (3) the average annual salary, excluding benefits which are not
19 subject to Oklahoma income taxes, for new direct jobs created as
20 a direct result of the awarding of the contract is projected by the
21 Department of Commerce to equal or exceed Forty Thousand

1 Dollars (\$40,000.00) within three (3) years of the date of the first
2 incentive payment,

3 c. except as otherwise provided in subparagraph d of this paragraph, in
4 no event shall incentive payments, cumulatively, exceed the estimated
5 net direct state benefits,

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

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

11 (2) in a county in which:

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

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

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

- 1 e. the net benefit rate shall not exceed six percent (6%) in connection
2 with an establishment which:
- 3 (1) is, as of the date of application, receiving incentive payments
4 pursuant to the Oklahoma Quality Jobs Program Act and has
5 been receiving such payments for at least one (1) year prior to
6 the date of application, and
- 7 (2) expands its operations in this state by creating additional new
8 direct jobs which pay average annualized wages which equal or
9 exceed one hundred fifty percent (150%) of the average
10 annualized wages of new direct jobs on which incentive
11 payments were received during the preceding calendar year, and
- 12 f. with respect to an establishment defined or classified in the NAICS
13 Manual under U.S. Industry No. 711211 (2007 version), the net
14 benefit rate shall not exceed the highest rate of income tax imposed
15 upon the Oklahoma taxable income of individuals pursuant to
16 subparagraph (g) or subparagraph (h), as applicable, of paragraph 1
17 and paragraph 2 of subsection B of Section 2355 of this title. Any
18 change in such highest rate of individual income tax imposed
19 pursuant to the provisions of Section 2355 of this title shall be
20 applicable to the computation of incentive payments to an
21 establishment as described by this subparagraph and shall be effective
22 for purposes of incentive payments based on payroll paid by such

1 establishment on or after January 1 of any applicable year for which
2 the net benefit rate is modified as required by this subparagraph.

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

8 8. “Gross payroll” means wages, as defined in Section 2385.1 of this title for new
9 direct jobs; provided, with respect to an establishment defined or classified in the NAICS
10 Manual under U.S. Industry No. 711211 (2007 version), the term “gross payroll” shall
11 include the entire amount of wages paid by the establishment to its employees in new
12 direct jobs regardless of whether Oklahoma income tax is or will be due on such wages;

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

- 1 (1) the entity must have a minimum payroll of Two Million Five
2 Hundred Thousand Dollars (\$2,500,000.00) and the subunit
3 must also have or will have a minimum payroll of Two Million
4 Five Hundred Thousand Dollars (\$2,500,000.00),
- 5 (2) the subunit is engaged in an activity or service or produces a
6 product which is demonstratively independent and separate
7 from the entity's other activities, services or products and could
8 be conducted or produced in the absence of any other activity,
9 service or production of the entity,
- 10 (3) has an accounting system capable of tracking or facilitating an
11 audit of the subunit's payroll, expenses, revenue and production.
12 Limited interunit overlap of administrative and purchasing
13 functions shall not disqualify a subunit from consideration as an
14 establishment by the Department,
- 15 (4) the entity has not previously had a subunit determined to be an
16 establishment pursuant to this section; provided, the restriction
17 set forth in this division shall not apply to subunits which
18 qualify pursuant to the provisions of subparagraph b of
19 paragraph 6 of this subsection, and
- 20 (5) it is determined by the Department that the entity will have a
21 probable net gain in total employment within the incentive
22 period.

1 b. The Department may promulgate rules to further limit the
2 circumstances under which a subunit may be considered an
3 establishment. The Department shall promulgate rules to determine
4 whether a subunit of an entity achieves a net gain in total
5 employment. The Department shall establish criteria for determining
6 the period of time within which such gain must be demonstrated and a
7 method for determining net gain in total employment;

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

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

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

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

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

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

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

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

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

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

4 Section 3604. A. Except as otherwise provided in subsection I of this section, an
5 establishment which meets the qualifications specified in the Oklahoma Quality Jobs
6 Program Act may receive quarterly incentive payments for a ten-year period from the
7 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs
8 Program Act ~~in an~~; provided, such an establishment defined or classified in the NAICS
9 Manual under U.S. Industry No. 711211 (2007 version) may receive quarterly incentive
10 payments for a fifteen-year period. The amount ~~which~~ of such payments shall be equal to
11 the net benefit rate multiplied by the actual gross payroll of new direct jobs for a
12 calendar quarter as verified by the Oklahoma Employment Security Commission.

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

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

- 21 1. Be engaged in a basic industry;

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

4 3. Have a number of full-time-equivalent employees subject to the tax imposed by
5 Section 2355 of this title and working an annual average of thirty (30) or more hours per
6 week in new direct jobs 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 authorized by the Oklahoma
9 Quality Jobs Program Act, an establishment engaged in an activity described under:

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

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

1 in which case the requirements for purchase of output provided by this
2 subparagraph shall not apply, and

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

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

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

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

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

18 a. is a federal Superfund removal site,

19 b. is listed on the National Priorities List established under Section 9605
20 of Title 42 of the United States Code,

21 c. has been formally deferred to the state in lieu of listing on the National
22 Priorities List, or

1 d. has been determined by the Department of Environmental Quality to
2 be contaminated by any substance regulated by a federal or state
3 statute governing environmental conditions for real property pursuant
4 to an order of the Department of Environmental Quality,
5 shall qualify for incentive payments irrespective of its actual gross payroll or the number
6 of full-time-equivalent employees engaged in new direct jobs.

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

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

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

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

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

9 F. Except as otherwise provided by subsection G of this section, for applications
10 submitted on and after ~~the effective date of this act~~ June 4, 2003, in order to qualify to
11 receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in
12 addition to other qualifications specified herein, an establishment shall be required to
13 pay new direct jobs an average annualized wage which equals or exceeds:

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

19 2. One hundred percent (100%) of the average county wage as that percentage is
20 determined by the Oklahoma State Data Center based upon the most recent U.S.
21 Department of Commerce data for the county in which the new jobs are located. For

1 establishment changing its structure, consolidating with
2 another establishment, closing or moving all or part of its
3 operations out of this state, and

- 4 b. “significant number of jobs” means Local Area Unemployment
5 Statistics (LAUS) data, as determined by the Bureau of Labor
6 Statistics, for a county which are equal to or in excess of five percent
7 (5%) of the total amount of Local Area Unemployment Statistics
8 (LAUS) data for that county for the calendar year, or most recent
9 twelve-month period in which employment is measured, preceding the
10 event.

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

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

19 I. If the applicant is determined to be qualified by the Department and is not
20 subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section
21 3603 of this title, the Department shall conduct a cost/benefit analysis to determine the
22 estimated net direct state benefits and the net benefit rate applicable for a ten-year

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

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

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

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

19 Section 3606. A. As soon as practicable after the end of a calendar quarter for
20 which an establishment has qualified to receive an incentive payment, the establishment
21 shall file a claim for the payment with the Oklahoma Tax Commission and shall specify
22 the actual number and gross payroll of new direct jobs for the establishment for the

1 calendar quarter; provided, in no event shall the first claim for incentive payments be
2 filed later than three (3) years from the start date designated by the Oklahoma
3 Department of Commerce. The Tax Commission shall verify the actual gross payroll for
4 new direct jobs for the establishment for such calendar quarter. If the Tax Commission
5 is not able to provide such verification utilizing all available resources, the Tax
6 Commission may request such additional information from the establishment as may be
7 necessary or may request the establishment to revise its claim.

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

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

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

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

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

19 F. An establishment that is receiving incentive payments may not apply for
20 additional incentive payments for any new projects until twelve (12) quarters after
21 receipt of the first incentive payment, or until the establishment's actual verified gross
22 payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars

1 (\$2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes
2 first. After meeting the requirements of this subsection, an establishment may apply for
3 additional incentive payments based upon the gross payroll anticipated from an
4 expansion only.

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

10 SECTION 4. It being immediately necessary for the preservation of the public
11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
12 this act shall take effect and be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
14 FINANCIAL SERVICES, dated 04-09-08 - DO PASS, As Amended and Coauthored.