

SB 2153

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THE STATE SENATE
Monday, February 25, 2008

Senate Bill No. 2153
As Amended

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:

- 1 (a) an establishment engaged therein qualifies
2 as an exempt wholesale generator as defined
3 by 15 U.S.C., Section 79z-5a,
4 (b) the exempt wholesale generator facility
5 consumes from sources located within the
6 state at least ninety percent (90%) of the
7 total energy used to produce the electrical
8 output which qualifies for the specialized
9 treatment provided by the Energy Policy Act
10 of 1992, P.L. 102-486, 106 Stat. 2776, as
11 amended, and federal regulations adopted
12 pursuant thereto,
13 (c) the exempt wholesale generator facility
14 sells to purchasers located outside the
15 state for consumption in activities located
16 outside the state at least ninety percent
17 (90%) of the total electrical energy output
18 which qualifies for the specialized
19 treatment provided by the Energy Policy Act
20 of 1992, P.L. 102-486, 106 Stat. 2776, as
21 amended, and federal regulations adopted
22 pursuant thereto, and

- 1 (d) the facility is constructed on or after July
2 1, 1996,
- 3 (3) those administrative and facilities support
4 service activities defined or classified in the
5 NAICS Manual under Industry Group Nos. 5611 and
6 5612, Industry Nos. 51821, 518112, 52232, 56142
7 and 54191 or U.S. Industry Nos. 524291 and
8 551114, and those other support activities for
9 air transportation defined or classified in the
10 NAICS Manual under Industry Group No. 488190,
- 11 (4) those professional, scientific and technical
12 service activities defined or classified in the
13 NAICS Manual under U.S. Industry Nos. 541710 and
14 541380,
- 15 (5) distribution centers for retail or wholesale
16 businesses defined or classified in the NAICS
17 Manual under Sector No. 42, if forty percent
18 (40%) or more of the inventory processed through
19 such warehouse is shipped out-of-state,
- 20 (6) those adjustment and collection service
21 activities defined or classified in the NAICS
22 Manual under U.S. Industry No. 561440, if

1 seventy-five percent (75%) of the loans to be
2 serviced were made by out-of-state debtors,
3 (7) (a) those air transportation activities defined
4 or classified in the NAICS Manual under
5 Industry Group No. 4811, if the following
6 facilities are located in this state:
7 (i) the corporate headquarters of an
8 establishment classified therein, and
9 (ii) a facility or facilities at which
10 reservations for transportation
11 provided by such an establishment are
12 processed, whether such services are
13 performed by employees of the
14 establishment, by employees of a
15 subsidiary of or other entity
16 affiliated with the establishment or by
17 employees of an entity with whom the
18 establishment has contracted for the
19 performance of such services; provided,
20 this provision shall not disqualify an
21 establishment which uses an out-of-
22 state entity or employees for some
23 reservations services, or

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

15 (8) flight training services activities defined or
16 classified in the NAICS Manual under U.S.
17 Industry Group No. 611512, which for purposes of
18 this act shall include new direct jobs for which
19 gross payroll existed on or after January 1,
20 2003, as identified in the NAICS Manual,

21 (9) the following, if an establishment classified
22 therein has or will have within one (1) year
23 sales of at least seventy-five percent (75%) of

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

8 (a) those transportation and warehousing
9 activities defined or classified in the
10 NAICS Manual under Industry Subsector No.
11 493, if not otherwise listed in this
12 paragraph, Industry Subsector No. 484 and
13 Industry Group Nos. 4884 through 4889,

14 (b) those passenger transportation activities
15 defined or classified in the NAICS Manual
16 under Industry Nos. 561510, 561520 and
17 561599,

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

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

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

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

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

1 Aviation Administration located in this state if
2 the Director of the Department of Commerce
3 determines or is notified that the federal
4 government is soliciting proposals or otherwise
5 inviting states to compete for additional federal
6 civilian employment or expansion of federal
7 civilian employment at such facilities.

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

- 17 (1) not more than fifty percent (50%) of the premium
18 shall be paid by the employee,
19 (2) coverage for basic hospital care,
20 (3) coverage for physician care,
21 (4) coverage for mental health care,
22 (5) coverage for substance abuse treatment,
23 (6) coverage for prescription drugs, and

1 (7) coverage for prenatal care;

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

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

10 A transferor shall be treated as related to a transferee if more
11 than fifty percent (50%) of the voting interests of the transferor
12 and transferee are owned, directly or indirectly, by the other or
13 are owned, directly or indirectly, by the same person or persons,
14 unless such transferred establishment has an outstanding class of
15 equity securities registered under Sections 12(b) or 15(d) of the
16 Securities Exchange Act of 1934, as amended, in which event the
17 transferor and transferee will be treated as unrelated; provided, an
18 establishment applying for the Oklahoma Quality Jobs Program Act as
19 a result of a change of control event is required to apply within
20 one hundred eighty (180) days of the change in control event to
21 qualify for consideration. An establishment entering the Oklahoma
22 Quality Jobs Program Act as the result of a change of control event
23 shall be required to maintain a level of new direct jobs as agreed

1 to in its contract with the Department of Commerce and to pay new
2 direct jobs an average annualized wage which equals or exceeds one
3 hundred twenty-five percent (125%) of the average county wage as
4 that percentage is determined by the Oklahoma State Data Center
5 based upon the most recent U.S. Department of Commerce data for the
6 county in which the new jobs are located. For purposes of this
7 paragraph, healthcare premiums paid by the applicant for individuals
8 in new direct jobs shall not be included in the annualized wage.
9 Such establishment entering the Quality Jobs Program Act as the
10 result of a change of control event shall be required to retain the
11 contracted average annualized wage and maintain the contracted
12 maintenance level of new direct jobs numbers as certified by the
13 Oklahoma Tax Commission. If the required average annualized wage or
14 the required new direct jobs numbers do not equal or exceed such
15 contracted level during any quarter, the quarterly incentive
16 payments shall not be made and shall not be resumed until such time
17 as such requirements are met. An establishment described in this
18 paragraph shall be required to repay all incentive payments received
19 under the Quality Jobs Program Act if the establishment is
20 determined by the Oklahoma Tax Commission to no longer have business
21 operations in the state within three (3) years from the beginning of
22 the calendar quarter for which the first incentive payment claim is
23 filed.

1 3. "New direct job":

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

20 b. shall include full-time-equivalent employment in this
21 state of employees who are employed by an employment
22 agency or similar entity other than the establishment
23 which has qualified to receive an incentive payment

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

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

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

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

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

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

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

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

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

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

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

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

13 9. a. "Establishment" means any business or governmental
14 entity, no matter what legal form, including, but not
15 limited to, a sole proprietorship; partnership;
16 limited liability company; corporation or combination
17 of corporations which have a central parent
18 corporation which makes corporate management decisions
19 such as those involving consolidation, acquisition,
20 merger or expansion; federal agency; political
21 subdivision of the State of Oklahoma; or trust
22 authority; provided, distinct, identifiable subunits
23 of such entities may be determined to be an

1 establishment, for all purposes of Section 3601 et
2 seq. of this title, by the Department subject to the
3 following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3604, as
18 last amended by Section 63, Chapter 1, O.S.L. 2007 (68 O.S. Supp.
19 2007, Section 3604), is amended to read as follows:

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

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

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

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

- 17 1. Be engaged in a basic industry;
- 18 2. Have an annual gross payroll for new direct jobs projected
19 by the Department to equal or exceed Two Million Five Hundred
20 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
21 complete calendar quarter following the start date; and
- 22 3. Have a number of full-time-equivalent employees subject to
23 the tax imposed by Section 2355 of this title and working an annual

1 average of thirty (30) or more hours per week in new direct jobs
2 located in this state equal to or in excess of eighty percent (80%)
3 of the total number of new direct jobs.

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

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

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

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

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

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

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

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

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

22 a. is a federal Superfund removal site,

1 b. is listed on the National Priorities List established
2 under Section 9605 of Title 42 of the United States
3 Code,
4 c. has been formally deferred to the state in lieu of
5 listing on the National Priorities List, or
6 d. has been determined by the Department of Environmental
7 Quality to be contaminated by any substance regulated
8 by a federal or state statute governing environmental
9 conditions for real property pursuant to an order of
10 the Department of Environmental Quality,
11 shall qualify for incentive payments irrespective of its actual
12 gross payroll or the number of full-time-equivalent employees
13 engaged in new direct jobs.

14 2. In order to qualify for the incentive payments pursuant to
15 this subsection, the establishment shall conduct the activity
16 resulting in at least fifty percent (50%) of its Oklahoma taxable
17 income or adjusted gross income, as determined under Section 2358 of
18 this title, whether from the sale of products or services or both
19 products and services, at the physical location which has been
20 determined not to comply with the federal or state statutes
21 described in this subsection with respect to environmental
22 conditions for real property. The establishment shall be subject to

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

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

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

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

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

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

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

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

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

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

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

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

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

12 2. As used in this subsection:

13 a. "negative economic event" means:

- 14 (1) a man-made disaster or natural disaster as
15 defined in Section 683.3 of Title 63 of the
16 Oklahoma Statutes, resulting in the loss of a
17 significant number of jobs within a particular
18 county of this state, or
19 (2) an economic circumstance in which a significant
20 number of jobs within a particular county of this
21 state have been lost due to an establishment
22 changing its structure, consolidating with

1 another establishment, closing or moving all or
2 part of its operations out of this state, and

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

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

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

21 I. If the applicant is determined to be qualified by the
22 Department and is not subject to the provisions of subparagraph d of
23 paragraph 6 of subsection A of Section 3603 of this title, the

1 Department shall conduct a cost/benefit analysis to determine the
2 estimated net direct state benefits and the net benefit rate
3 applicable for a ten-year period beginning with the first complete
4 calendar quarter following the start date and to estimate the amount
5 of gross payroll for a ten-year period beginning with the first
6 complete calendar quarter following the start date. In conducting
7 such cost/benefit analysis, the Department shall consider
8 quantitative factors, such as the anticipated level of new tax
9 revenues to the state along with the added cost to the state of
10 providing services, and such other criteria as deemed appropriate by
11 the Department. In no event shall incentive payments, cumulatively,
12 exceed the estimated net direct state benefits, except for
13 applicants subject to the provisions of subparagraph d of paragraph
14 ~~6~~ 7 of subsection A of Section 3603 of this title.

15 J. Upon approval of such an application, the Department shall
16 notify the Tax Commission and shall provide it with a copy of the
17 ~~application~~ contract and the results of the cost/benefit analysis.
18 The Tax Commission may require the qualified establishment to submit
19 such additional information as may be necessary to administer the
20 provisions of the Oklahoma Quality Jobs Program Act. The approved
21 establishment shall ~~report to~~ file quarterly claims with the Tax
22 Commission ~~periodically~~ and shall continue to file such quarterly
23 claims during the ten-year incentive period to show its continued

1 eligibility for incentive payments, as provided in Section 3606 of
2 this title, or until it is no longer qualified to receive incentive
3 payments. The establishment may be audited by the Tax Commission to
4 verify such eligibility. Once the establishment is approved, an
5 agreement shall be deemed to exist between the establishment and the
6 State of Oklahoma, requiring the continued incentive payment to be
7 made as long as the establishment retains its eligibility as defined
8 in and established pursuant to this section and Sections 3603 and
9 3606 of this title and within the limitations contained in the
10 Oklahoma Quality Jobs Program Act, which existed at the time of such
11 approval.

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

1 establishment pursuant to the provisions of this section. If such
2 claim is approved, the amount of the payment to the establishment
3 made pursuant to the provisions of Section 3606 of this title shall
4 be reduced by the amount of the approved claim by the municipality
5 and the Tax Commission shall issue a warrant to the municipality in
6 the amount of the approved claim in the same manner as warrants are
7 issued to qualifying establishments.

8 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3606, as
9 last amended by Section 65, Chapter 1, O.S.L. 2007 (68 O.S. Supp.
10 2007, Section 3606), is amended to read as follows:

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

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

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

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

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

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

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

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

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

20 Section 3607. Notwithstanding any other provision of law, if a
21 qualified establishment receives an incentive payment pursuant to
22 the provisions of Section 3601 et seq. of this title, neither the
23 qualified establishment nor its contractors or subcontractors shall

1 be eligible to receive the credits or exemptions provided for in the
2 following provisions of law in connection with the activity for
3 which the incentive payment was received:

- 4 1. Paragraphs 14 and 15 of Section 1357 of this title;
- 5 2. Paragraph 7 of Section 1359 of this title;
- 6 3. Section 2357.4 of this title;
- 7 4. Section 2357.7 of this title;
- 8 5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
- 9 6. Section 2357.22 of this title;
- 10 7. Section 2357.31 of this title;
- 11 8. Section 54003 of this title;
- 12 9. Section 54006 of this title;
- 13 10. Section 625.1 of Title 36 of the Oklahoma Statutes;
- 14 11. Subsections C and D of Section 2357.59 of this title; ~~or~~
- 15 12. Section 2357.13 of this title; or
- 16 13. Section 4201 of this title.

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-19-08 - DO PASS,
19 As Amended and Coauthored.