

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 2128 By: Myers of the Senate
3 and
4 Jackson of the House
5
6

7 (revenue and taxation - Oklahoma Quality Jobs
8 Program Act - limiting time period during which
9 certain application must be made - effective date -
10 emergency)
11
12

13 AUTHOR: Add the following House Coauthor: Luttrell

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

16 "An Act relating to revenue and taxation; amending 68
17 O.S. 2001, Section 3603, as last amended by Section
18 70 of Enrolled Senate Bill No. 2113 of the 2nd
19 Session of the 52nd Oklahoma Legislature and Section
20 2, Chapter 369, O.S.L. 2009 (68 O.S. Supp. 2009,
21 Section 3604.1), which relate to the Oklahoma
22 Quality Jobs Program Act; modifying definitions;
23 modifying procedures and requirements with respect
24 to incentive payments awarded based on certain
contractor or subcontractor relationships; providing
for nonpayment of incentive under certain
conditions; providing for resumed payments;
disallowing incentive payments based upon receipt of
incentive payments from designated statutory
provisions; providing an effective date; and
declaring an emergency.

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

2 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
3 last amended by Section 70 of Enrolled Senate Bill No. 2113 of the
4 2nd Session of the 52nd Oklahoma Legislature, is amended to read as
5 follows:

6 Section 3603. A. As used in Section 3601 et seq. of this
7 title:

8 1. a. "Basic industry" means:

9 (1) those manufacturing activities defined or
10 classified in the NAICS Manual under Industry
11 Sector Nos. 31, 32 and 33, Industry Group No.
12 5111 or Industry No. 11331,

13 (2) those electric power generation, transmission and
14 distribution activities defined or classified in
15 the NAICS Manual under U.S. Industry Nos. 221111
16 through 221122, if:

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

20 (b) the exempt wholesale generator facility
21 consumes from sources located within the
22 state at least ninety percent (90%) of the
23 total energy used to produce the electrical
24 output which qualifies for the specialized

1 treatment provided by the Energy Policy Act
2 of 1992, P.L. 102-486, 106 Stat. 2776, as
3 amended, and federal regulations adopted
4 pursuant thereto,

5 (c) the exempt wholesale generator facility
6 sells to purchasers located outside the
7 state for consumption in activities located
8 outside the state at least ninety percent
9 (90%) of the total electrical energy output
10 which qualifies for the specialized
11 treatment provided by the Energy Policy Act
12 of 1992, P.L. 102-486, 106 Stat. 2776, as
13 amended, and federal regulations adopted
14 pursuant thereto, and

15 (d) the facility is constructed on or after July
16 1, 1996,

17 (3) those administrative and facilities support
18 service activities defined or classified in the
19 NAICS Manual under Industry Group Nos. 5611 and
20 5612, Industry Nos. 51821, 519130, 52232, 56142
21 and 54191 or U.S. Industry Nos. 524291 and
22 551114, those other support activities for air
23 transportation defined or classified in the NAICS
24 Manual under Industry Group No. 488190, and those

1 support, repair, and maintenance service
2 activities for the wind industry defined or
3 classified in the NAICS Manual under Industry
4 Group No. 811310,

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

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

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

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

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

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

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

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

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

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

23 (a) those transportation and warehousing
24 activities defined or classified in the

1 NAICS Manual under Industry Subsector No.
2 493, if not otherwise listed in this
3 paragraph, Industry Subsector No. 484 and
4 Industry Group Nos. 4884 through 4889,

5 (b) those passenger transportation activities
6 defined or classified in the NAICS Manual
7 under Industry Nos. 561510, 561520 and
8 561599,

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

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

15 (e) those mailing, reproduction, commercial art
16 and photography and stenographic service
17 activities defined or classified in the
18 NAICS Manual under U.S. Industry Nos.
19 541430, 541860, 541922, 561439 and 561492,

20 (f) those services to dwellings and other
21 buildings, as defined or classified in the
22 NAICS Manual under Industry Group No. 5617,
23 excluding U.S. Industry No. 561730,
24

- 1 (g) those equipment rental and leasing
2 activities defined or classified in the
3 NAICS Manual under Industry Group Nos. 5323
4 and 5324,
- 5 (h) those employment services defined or
6 classified in the NAICS Manual under
7 Industry Group No. 5613,
- 8 (i) those information technology and other
9 computer-related service activities defined
10 or classified in the NAICS Manual under
11 Industry Group Nos. 5112, 5182, 5191 and
12 5415,
- 13 (j) those business support service activities
14 defined or classified in the NAICS Manual
15 under U.S. Industry Nos. 561410 through
16 561439, Industry Group No. 5616 and Industry
17 No. 51911,
- 18 (k) those medical and diagnostic laboratory
19 activities defined or classified in the
20 NAICS Manual under Industry Group No. 6215,
- 21 (l) those professional, scientific and technical
22 service activities defined or classified in
23 the NAICS Manual under Industry Group Nos.
24 5412, 5414, 5415, 5416 and 5417, Industry

1 Nos. 54131, 54133, 54136, 54137 and 54182,
2 and U.S. Industry No. 541990, if not
3 otherwise listed in this paragraph,

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

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

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

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

1 (q) those agricultural activities classified in
2 the NAICS Manual under U.S. Industry Nos.
3 112120 and 112310, and

4 (r) those professional organization activities
5 classified in the NAICS Manual under U.S.
6 Industry No. 813920;

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

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

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

1 (13) those real estate or brokerage activities
2 classified in the NAICS Manual under U.S.
3 Industry No. 53120 for which at least seventy-
4 five percent (75%) of the establishment's
5 revenues are attributed to out-of-state sales and
6 at least seventy-five percent (75%) of the real
7 estate transactions generating those revenues are
8 attributed to real property located outside the
9 State of Oklahoma.

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

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

1 (6) coverage for prescription drugs, and

2 (7) coverage for prenatal care;

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

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

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

11 A transferor shall be treated as related to a transferee if more
12 than fifty percent (50%) of the voting interests of the transferor
13 and transferee are owned, directly or indirectly, by the other or
14 are owned, directly or indirectly, by the same person or persons,
15 unless such transferred establishment has an outstanding class of
16 equity securities registered under Sections 12(b) or 15(d) of the
17 Securities Exchange Act of 1934, as amended, in which event the
18 transferor and transferee will be treated as unrelated; provided, an
19 establishment applying for the Oklahoma Quality Jobs Program Act as
20 a result of a change of control event is required to apply within
21 one hundred eighty (180) days of the change in control event to
22 qualify for consideration. An establishment entering the Oklahoma
23 Quality Jobs Program Act as the result of a change of control event
24 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.

24 3. "New direct job":

1 a. means full-time-equivalent employment in this state in
2 an establishment which has qualified to receive an
3 incentive payment pursuant to the provisions of
4 Section 3601 et seq. of this title which employment
5 did not exist in this state prior to the date of
6 approval by the Department of the application of the
7 establishment pursuant to the provisions of Section
8 3604 of this title and with respect to an
9 establishment qualifying for incentive payments
10 pursuant to division (12) of subparagraph a of
11 paragraph 1 of this subsection shall not include
12 compensation paid to an employee or independent
13 contractor for an athletic contest conducted in the
14 state if the compensation is paid by an entity that
15 does not have its principal place of business in the
16 state or that does not own real or personal property
17 having a market value of at least One Million Dollars
18 (\$1,000,000.00) located in the state, and the
19 employees or independent contractors of such entity
20 are compensated to compete against the employees or
21 independent contractors of an establishment that
22 qualifies for incentive payments pursuant to division
23 (12) of subparagraph a of paragraph 1 of this
24 subsection and which is organized under Oklahoma law

1 or that is lawfully registered to do business in the
2 state and which does have its principal place of
3 business located in the state and owns real or
4 personal property having a market value of at least
5 One Million Dollars (\$1,000,000.00) located in the
6 state; provided, that if an application of an
7 establishment is approved by the Department of
8 Commerce after a change in control event and the
9 Director of the Department of Commerce determines that
10 the jobs located at such establishment are likely to
11 leave the state, "new direct job" shall include
12 employment that existed in this state prior to the
13 date of application which is retained in this state by
14 the new establishment following a change in control
15 event, if such job otherwise qualifies as a new direct
16 job, and

- 17 b. shall include full-time-equivalent employment in this
18 state of employees who are employed by an employment
19 agency or similar entity other than the establishment
20 which has qualified to receive an incentive payment
21 and who are leased or otherwise provided under
22 contract to the qualified establishment, if such job
23 did not exist in this state prior to the date of
24 approval by the Department of the application of the

1 establishment or the job otherwise qualifies as a new
2 direct job following a change in control event. A job
3 shall be deemed to exist in this state prior to
4 approval of an application if the activities and
5 functions for which the particular job exists have
6 been ongoing at any time within six (6) months prior
7 to such approval. With respect to establishments
8 defined in division (10) of subparagraph a of
9 paragraph 1 of this subsection, new direct jobs shall
10 be limited to those jobs directly comprising the
11 corporate headquarters of or directly relating to
12 administrative, financial, engineering, surveying,
13 geological or geophysical services performed by the
14 establishment. Under no circumstances shall
15 employment relating to drilling or field services be
16 considered new direct jobs;

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

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

23 a. the costs of education of new state resident children,
24

- 1 b. the costs of public health, public safety and
2 transportation services to be provided to new state
3 residents,
4 c. the costs of other state services to be provided to
5 new state residents, and
6 d. the costs of other state services;

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

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

- 11 a. except as otherwise provided in this paragraph, the
12 net benefit rate may be variable and shall not exceed
13 five percent (5%),
14 b. the net benefit rate shall not exceed six percent (6%)
15 in connection with an establishment which is owned and
16 operated by an entity which has been awarded a United
17 States Department of Defense contract for which:
18 (1) bids were solicited and accepted by the United
19 States Department of Defense from facilities
20 located outside this state,
21 (2) the term is or is renewable for not less than
22 twenty (20) years, and
23 (3) the average annual salary, excluding benefits
24 which are not subject to Oklahoma income taxes,

1 for new direct jobs created as a direct result of
2 the awarding of the contract is projected by the
3 Department of Commerce to equal or exceed Forty
4 Thousand Dollars (\$40,000.00) within three (3)
5 years of the date of the first incentive payment,

6 c. except as otherwise provided in subparagraph d of this
7 paragraph, in no event shall incentive payments,
8 cumulatively, exceed the estimated net direct state
9 benefits,

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

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

15 (2) in a county in which:

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

20 (b) the population has decreased over the
21 previous ten (10) years, as determined by
22 the State Data Center based on the most
23 recent U.S. Department of Commerce data, or
24

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

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

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

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

20 f. with respect to an establishment defined or classified
21 in the NAICS Manual under U.S. Industry No. 711211
22 (2007 version) or any establishment defined or
23 classified in the NAICS Manual as a U.S. Industry
24 Number which is not included within the definition of

1 "basic industry" as such term is defined in this
2 section on April 17, 2008, the net benefit rate shall
3 not exceed the highest rate of income tax imposed upon
4 the Oklahoma taxable income of individuals pursuant to
5 subparagraph (g) or subparagraph (h), as applicable,
6 of paragraph 1 and paragraph 2 of subsection B of
7 Section 2355 of this title. Any change in such
8 highest rate of individual income tax imposed pursuant
9 to the provisions of Section 2355 of this title shall
10 be applicable to the computation of incentive payments
11 to an establishment as described by this subparagraph
12 and shall be effective for purposes of incentive
13 payments based on payroll paid by such establishment
14 on or after January 1 of any applicable year for which
15 the net benefit rate is modified as required by this
16 subparagraph.

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

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

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

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

22 (2) the subunit is engaged in an activity or service
23 or produces a product which is demonstratively
24 independent and separate from the entity's other

1 activities, services or products and could be
2 conducted or produced in the absence of any other
3 activity, service or production of the entity,
4 (3) has an accounting system capable of tracking or
5 facilitating an audit of the subunit's payroll,
6 expenses, revenue and production. Limited
7 interunit overlap of administrative and
8 purchasing functions shall not disqualify a
9 subunit from consideration as an establishment by
10 the Department,

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

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

21 b. The Department may promulgate rules to further limit
22 the circumstances under which a subunit may be
23 considered an establishment. The Department shall
24 promulgate rules to determine whether a subunit of an

1 entity achieves a net gain in total employment. The
2 Department shall establish criteria for determining
3 the period of time within which such gain must be
4 demonstrated and a method for determining net gain in
5 total employment;

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

10 11. "Qualified federal contract" means a contract between an
11 agency or instrumentality of the United States government, including
12 but not limited to the Department of Defense or any branch of the
13 United States Armed Forces, but exclusive of any contract performed
14 for the Federal Emergency Management Agency as a direct result of a
15 natural disaster declared by the Governor or the President of the
16 United States with respect to damage to property located in Oklahoma
17 or loss of life or personal injury to persons in Oklahoma, and a
18 lawfully recognized business entity, whether or not the business
19 entity is organized under the laws of the State of Oklahoma or
20 whether or not the principal place of business of the business
21 entity is located within the State of Oklahoma, for the performance
22 of services, including but not limited to testing, research,
23 development, consulting or other services in a basic industry, if
24 the contract involves the performance of such services that are

1 capable of being accomplished without a State of Oklahoma workforce
2 and are performed by a State of Oklahoma workforce on or after the
3 effective date of this act by the employees of the business entity
4 within the State of Oklahoma or if the contract involves the
5 performance of such services performed on or after the effective
6 date of this act by employees of a lawfully recognized business
7 entity that is a subcontractor of the business entity with which the
8 prime contract has been formed. A qualified federal contract
9 described in this paragraph shall not qualify unless both the
10 qualified federal contractor and any subcontractors originally
11 involved in the work or added subsequently during the period of
12 performance verify to the qualified federal contractor verifier that
13 it offers, or will offer within one hundred eighty (180) days of
14 employment of its respective employees, a basic health benefits plan
15 as described in subparagraph b of paragraph 1 of this subsection to
16 individuals who perform qualified labor hours in this state;

17 12. "Qualified federal contractor verifier" means a nonprofit
18 entity organized under the laws of the State of Oklahoma, having an
19 affiliation with a comprehensive university which is part of The
20 Oklahoma State System of Higher Education, and having the following
21 characteristics:

22 a. established multiyear classified and unclassified
23 indefinite-delivery/indefinite-quantity federal
24

1 contract vehicles in excess of Fifty Million Dollars
2 (\$50,000,000.00),

3 b. current capability to sponsor and maintain personnel
4 security clearances and authorized by the federal
5 government to handle and perform classified work up to
6 the Top Secret Sensitive Compartmented Information
7 levels,

8 c. at least one on-site federally certified Sensitive
9 Compartmented Information Facility,

10 d. on-site secure mass data storage complex with the
11 capability of isolating, segregating and protecting
12 corporate proprietary and classified information,

13 e. trusted agent status by maintaining no ownership of,
14 vested interest in, nor royalty production from any
15 intellectual property,

16 f. at least one hundred thousand (100,000) square feet of
17 configurable laboratory and support space,

18 g. the direct access to restricted air space through a
19 formalized memorandum of agreement with the Department
20 of Defense,

21 h. at least five thousand (5,000) acres available for
22 outdoor testing and training facilities, and

23 i. the ability to house state-of-the-art surety
24 facilities, including chemical, biological,

1 radiological, explosives, electronics, and unmanned
2 systems laboratories and ranges;

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

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

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

15 16. "Total qualified labor hours" means the reimbursed payment
16 amount for hours of work performed ~~within the state by the employees~~
17 by the State of Oklahoma workforce of a qualified federal contractor
18 or the ~~employees~~ State of Oklahoma workforce of a subcontractor of a
19 qualified federal contractor and which are required for the full
20 performance of a qualified federal contract; ~~and~~

21 17. "Qualified labor rate" means the fully reimbursed labor
22 rate paid through a qualified federal contract for qualified labor
23 hours to the qualified federal contractor or subcontractor; and

24 18. "Qualified federal contractor" means a business entity:

- 1 a. maintaining a prime contract with the federal
2 government as defined in paragraph 11 of this
3 subsection,
- 4 b. providing notice of intent to apply to the Department
5 within one hundred eighty (180) days of the effective
6 date of this act or one hundred eighty (180) days of
7 the date of the award of a qualified federal contract
8 or award of a new qualified subcontract under an
9 existing qualified federal contract, and
- 10 c. adding substantively to the contract by performing at
11 least eight percent (8%) of the total labor whether
12 qualified and nonqualified labor as determined by the
13 federal contractor verifier on a direct contract or
14 individual task order or delivery order on an
15 indefinite-delivery/indefinite-quantity or other
16 blanket contract vehicle.

17 Should a prime contractor provide notice to the Department of
18 its intent not to apply for incentive for a qualified federal
19 contract or fail to qualify under the criteria above, subcontractors
20 in order of tier ranking as determined by the federal contract
21 verifier may assume the role of the prime and apply to become a
22 qualified federal contractor provided the entity meets the same
23 criteria above with the exception that notice of intent to apply
24 with the Department must be provided within sixty (60) days of the

1 prime's disqualification or one hundred eighty (180) days of the
2 award of its subcontract, whichever is later.

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

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

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

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

24

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

8 SECTION 2. AMENDATORY Section 2, Chapter 369, O.S.L.
9 2009 (68 O.S. Supp. 2009, Section 3604.1), is amended to read as
10 follows:

11 Section 3604.1 A. A qualified federal contractor may receive
12 quarterly incentive payments for renewable ten-year periods from the
13 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma
14 Quality Jobs Program Act and the provisions of this section.

15 B. The amount of such payments shall be equal to a net benefit
16 rate of not less than twenty-five hundredths of one percent (0.25%),
17 but not greater than two percent (2%), multiplied by the total
18 qualified labor hours worked by employees of the federal contractor
19 or employees of a qualified federal subcontractor, or both, pursuant
20 to a qualified federal contract for a calendar quarter as verified
21 by the Oklahoma Employment Security Commission and certified by a
22 qualified federal contractor verifier. The net benefit rate for a
23 qualified federal contractor shall be scaled to annual
24 subcontracting goals that account for both total qualified

1 subcontract labor hours and the ratio of qualified subcontract labor
2 hours to total qualified labor hours. Unless limited by the
3 cost/benefit analysis, the net benefit rate shall:

4 1. Not exceed twenty-five hundredths of one percent (0.25%)
5 when annual qualified subcontract labor hours are less than Two
6 Hundred Thousand Dollars (\$200,000.00) or when annual qualified
7 subcontract labor is less than one percent (1%) of the annual total
8 qualified labor hours claimed;

9 2. Not be less than five-tenths of one percent (0.5%) when
10 subcontract goals are met with a minimum of Two Hundred Thousand
11 Dollars (\$200,000.00) of annual total qualified subcontractor labor
12 hours and these hours are a minimum of one percent (1%) of the
13 annual total qualified hours claimed;

14 3. Not be less than one percent (1%) when subcontract goals are
15 met with a minimum of One Million Dollars (\$1,000,000.00) of annual
16 total qualified subcontractor labor hours and when these hours
17 represent a minimum of five percent (5%) of the annual total
18 qualified hours claimed;

19 4. Not be less than one and five-tenths percent (1.5%) when
20 subcontract goals are met with a minimum of Two Million Dollars
21 (\$2,000,000.00) of annual total qualified subcontractor labor hours
22 and these hours are a minimum of ten percent (10%) of the annual
23 total qualified hours claimed; and

24

1 5. Not be less than two percent (2.0%) when subcontract goals
2 are met with a minimum of Four Million Dollars (\$4,000,000.00) of
3 annual total qualified subcontractor labor hours and these hours are
4 a minimum of twenty percent (20%) of the annual total qualified
5 hours claimed.

6 C. In order to receive incentive payments, a qualified federal
7 contractor shall apply to the Oklahoma Department of Commerce within
8 one hundred eighty (180) days following the date of the award of a
9 qualified federal contract or award of a new qualified subcontract
10 under an existing qualified federal contract. The application shall
11 be on a form prescribed by the Department and shall contain such
12 information as may be required by the Department to determine if the
13 applicant is qualified. Once qualified by the Department, the
14 applicant shall submit qualified federal contracts to the federal
15 contract verifier. The federal contract verifier shall establish
16 with the applicant an information system(s) or contract(s) as may be
17 required to certify the total qualified labor hours, qualified labor
18 rates, and reimbursement through the qualified federal contract. A
19 qualified federal contractor may apply for an effective date for a
20 project, which shall not be more than twenty-four (24) months from
21 the date the application is submitted to the Department. No state
22 agency shall be required to make any payment to a qualified federal
23 contract verifier for any information needed by the agency to
24 perform any duty imposed upon it pursuant to the provisions of this

1 act. All costs for the federal contract verifier shall be
2 reimbursed through value-added services on the qualified federal
3 contract or other mechanisms agreed to by the federal contractor
4 verifier and the federal contract performers.

5 D. In order to qualify to receive incentive payments as
6 authorized by the Oklahoma Quality Jobs Program Act, in addition to
7 other qualifications specified herein, a qualified federal
8 contractor shall be required to pay direct jobs an average
9 annualized wage which equals or exceeds:

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

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

23 Provided, no average wage requirement shall exceed ~~Twenty-five~~
24 ~~Thousand Dollars (\$25,000.00)~~ Twenty-nine Thousand Four Hundred Nine

1 Dollars (\$29,409.00), in any county. This maximum wage threshold
2 shall be indexed and modified from time to time based on the latest
3 Consumer Price Index year-to-date percent change release as of the
4 date of the annual average county wage data release from the Bureau
5 of Economic Analysis of the U.S. Department of Commerce.

6 3. For qualified subcontractor work, the qualified federal
7 contractor shall have a minimum average qualified labor rate
8 requirement paid to the subcontractor of ~~Twenty-six Dollars (\$26.00)~~
9 Thirty-one Dollars (\$31.00) per hour, in any county. This maximum
10 wage threshold shall be indexed and modified from time to time based
11 on the latest Consumer Price Index year-to-date percent change
12 release as of the date of the annual average county wage data
13 release from the Bureau of Economic Analysis of the U.S. Department
14 of Commerce.

15 E. The Department shall determine if the applicant is qualified
16 to receive incentive payments using information supplied to the
17 Department by the qualified federal contractor verifier.

18 F. If the applicant is determined to be qualified by the
19 Department, the Department shall conduct a cost/benefit analysis to
20 determine the estimated net direct state benefits and the net
21 benefit rate, as provided by subsection B of this section,
22 applicable for a ten-year period beginning with the first complete
23 calendar quarter following the start date and to estimate the amount
24 of gross payroll and total qualified labor hours for a ten-year

1 period beginning with the first complete calendar quarter following
2 the start date. In conducting such cost/benefit analysis, the
3 Department shall consider quantitative factors, such as the
4 anticipated level of new tax revenues to the state along with the
5 added cost to the state of providing services, and such other
6 criteria as deemed appropriate by the Department. In no event shall
7 incentive payments, cumulatively, exceed the estimated net direct
8 state benefits. Using this net cost/benefit analysis model, the
9 Department may establish the renewable ten-year contract with a
10 qualified federal contractor at the entity level to encompass any
11 current or future qualified federal contracts that meet the
12 cost/benefit analysis metrics as determined by the federal
13 contractor verifier and confirmed by the Department.

14 G. Upon approval of such an application, the Department shall
15 notify the Tax Commission and shall provide it with a copy of the
16 contract that has been cosigned by the federal contractor verifier
17 and the results of the cost/benefit analysis. The Tax Commission
18 may require the qualified federal contractor, federal contract
19 verifier, and qualified subcontractors to submit such additional
20 information as may be necessary to administer the provisions of the
21 Oklahoma Quality Jobs Program Act. The approved qualified federal
22 contractor shall file quarterly claims with the Tax Commission and
23 shall continue to file such quarterly claims during the ten-year
24 incentive period to show its continued eligibility for incentive

1 payments, as provided in Section 3606 of ~~Title 68 of the Oklahoma~~
2 ~~Statutes~~ this title, or until it is no longer qualified to receive
3 incentive payments. The qualified federal contractor may be audited
4 by the Tax Commission to verify such eligibility. Once the
5 qualified federal contractor is approved, an agreement shall be
6 deemed to exist between the qualified federal contractor and the
7 State of Oklahoma, requiring the continued incentive payment to be
8 made as long as the qualified federal contractor retains its
9 eligibility as defined in and established pursuant to this section
10 and Sections 3603 and 3606 of ~~Title 68 of the Oklahoma Statutes~~ this
11 title and within the limitations contained in the Oklahoma Quality
12 Jobs Program Act, which existed at the time of such approval.

13 H. For qualified federal contracts with periods of performance
14 exceeding two (2) years, if the actual annual verified gross
15 qualified labor hours for four (4) consecutive calendar quarters
16 does not equal or exceed Two Million Five Hundred Thousand Dollars
17 (\$2,500,000.00) within three (3) years of the start date, or does
18 not equal or exceed actual annual gross qualified labor hours of Two
19 Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other
20 time during the ten-year period after the start date, the incentive
21 payments shall not be made and shall not be resumed until such time
22 as the actual annual qualified labor hours exceed Two Million Five
23 Hundred Thousand Dollars (\$2,500,000.00).

24

1 I. If the average annualized wage or minimum average qualified
2 labor rate required by subsection H of this section is not met
3 during any calendar quarter, the incentive payments shall not be
4 made and shall not be resumed until such time as such requirements
5 are met.

6 J. Before approving a quarterly incentive payment for a
7 qualified federal contract, the federal contract verifier must first
8 determine through the Department that neither the qualified federal
9 contractor nor the subcontractor are receiving incentive payments
10 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
11 Act, the 21st Century Quality Jobs Incentive Act or the Former
12 Military Facility Development Act for the performance of the same
13 such services under the qualified federal contract and is not
14 qualified for approval of an application for incentive payments
15 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
16 Act, the 21st Century Quality Jobs Incentive Act or the Former
17 Military Facility Development Act for the performance of the same
18 such services under the qualified federal contract. If the
19 qualified federal contractor or the subcontractor are receiving or
20 have an approved application for incentive payments under the
21 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the
22 21st Century Quality Jobs Incentive Act or the Former Military
23 Facility Development Act for the performance of the same such
24 services under the qualified federal contract, each may choose to

1 defer in part or in entirety the other incentives for the qualified
2 federal contractor to receive the incentives pursuant to subsection
3 B of this section. The federal contract verifier shall confirm any
4 deferrals and ensure the total for all quality jobs incentive
5 payments on any individual does not exceed the total net benefit to
6 the state.

7 SECTION 3. This act shall become effective July 1, 2010.

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

12 Passed the House of Representatives the 19th day of April, 2010.

13
14
15 _____
16 Presiding Officer of the House of
Representatives

17 Passed the Senate the ____ day of _____, 2010.

18
19
20 _____
21 Presiding Officer of the Senate

22
23
24